(26,285)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1917.**

## No. 818.

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THE TAYABAS LAND COMPANY, ASSIGNEE AND SUCCESSOR OF ROMANA VELASQUEZ ET AL., PLAINTIFF IN ERROR,

*vs.*

THE MANILA RAILROAD COMPANY.

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IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 UNITED STATES OF AMERICA,
*Philippine Islands:*

Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

ROMANA VELASQUEZ, MELECIO ALLAREY, and DEOGRACIAS MALIGALIG, Defendants and Appellants.

Expropriation Proceedings.

*Bill of Exceptions.*

I hereby certify that the following proceedings were had in the above entitled case, to-wit:

That on the 22d day of January, 1913, the plaintiff, through its attorneys, filed the following complaint:

*Complaint.*

Now comes the plaintiff company, a corporation duly organized and constituted under and by virtue of the laws of the State of New Jersey in the United States of America, domiciled in the City of Manila, Philippine Islands, operating various railroad lines in the Island of Luzon in the Philippine Archipelago, in accordance with the terms and conditions set forth in Acts Nos. 1510 and 1905 of the Philippine Legislature, and files this complaint against
2 each and all of the persons whose names appear as defendants in the hearing of this document, which said persons all reside in the municipality of Lucena, Province of Tayabas, Philippine Islands.

As cause of action the plaintiff company sets forth:

1.

That the said plaintiff company is the grantee of a franchise for the construction of a branch railroad between Lucena and Lanao.

2.

That the herein plaintiff company has the right to acquire the necessary lands by expropriation, in furtherance of the objects referred to in the concession, submitting the exercise of this right to the existing legislation in these Islands.

3.

That as a part of the right of way of the branch line referred to in paragraph one of this complaint, the concessionary company, plaintiff herein, requires to expropriate the parcels of land which compose part of the line referred to for its station at Lucena, the occupants whereof with their respective names are set forth in the plan of the parcels attached to this complaint as an integral part thereof and which are as follows:

Romana Velasquez; three parcels of land which respectively measure 16,094, 5,250 and 3,497 square meters, marked Nos. 21, 21*a*, and 21*b* on the plan.

Melecio Allarey; five parcels of land which respectively measure
1,830, 862, 119, 35, and 49 square meters, marked Nos. 22*a*,
3 22*b*, 22*c*, 22*d*, and 22*e* on the plan.

Deogracias Maligalig; four parcels of land which respectively measure 1,573, 1,512, 1,466, and 1,422 square meters, marked Nos. 23*a*, 23*b*, 23*c*, and 23*d* on the plan.

4.

That the plaintiff company has not been able to acquire by means of an extrajudicial agreement the different parcels which compose the foregoing tract, because, notwithstanding the most careful investigation it has been unable to discover who are the true owners thereof; wherefore, as the ownership is uncertain, it cites as defendants all persons who own or claim to own or occupy the various parcels of land which, taken together, compose the tract hereinbefore described.

5.

That for the reasons set forth in the foregoing paragraph, the concessionary company, plaintiff herein, finds itself unavoidably compelled to bring the present action, availing itself of the powers granted it by the laws aforecited, adding that some of the occupants or persons who claim to possess rights and interests in the various parcels of land above described which they have pretended to sell, have asked for their lands such excessively high prices that it has not been possible to accept them as they do not represent the true and just value of the lands and are from six to eight times greater than the value at which they are assessed.

For all of which the plaintiff company through its attorneys prays the court:

4 First. That it order the citation in legal form of each one of the defendants in order that they answer to the complaint and set forth such rights as they may possess in the parcels to be expropriated; that the court further order that all persons who have any rights and interests in the lands or improvements which

are the objects of the present expropriation proceedings be cited and summoned, either by the publication of this complaint in some periodical designated by the court or in such other special manner as the court may determine.

Second. That with respect to those defendants who do not prove themselves to be the owners of the parcels expropriated, the court will order and decree in accordance with the provisions of section 3 of Act No. 665, that the amount which corresponds to them be held on deposit by the clerk of the court until such time as the court declare who is the true owner.

Third. That the court will render judgment adjudicating to the plaintiff company the property and dominion of all the parcels of land which constitute the tract of land sought to be expropriated and fix the true and legal price which the company is to pay for the same to those persons who prove or establish their right thereto.

Manila, for Tayabas, January 22, 1913.

W. A. KINCAID &
THOMAS L. HARTIGAN,
(Sgd.) By W. A. KINCAID,
*Attorneys for Plaintiff.*

5 That on the same date, January 22, 1913, counsel for the plaintiff filed the following motion:

*Motion.*

Now comes the Manila Railroad Company, plaintiff in the above entitled cause, and respectfully shows to the Court:

1. That by complaint dated January 22, 1913, and filed in this Court on the 22 day of January, 1913, the plaintiff seeks to exercise the right of eminent domain under the provisions of its Charter and the laws of the Philippine Islands, for the purpose of acquiring certain small tracts of land for the railroad station site in the town of Lucena, Province of Tayabas, P. I.

2. That according to the attached telegrams, marked "A" and "B" respectively, and made a part of this motion, the Provincial Treasurer of the Province of Tayabas certifies that the assessed value of the lands in question are as follows:

| | | | | |
|---|---|---|---|---|
| Romana Velasquez | 03 | per | sq. | meter |
| Melecio Allarey | 16 | " | " | " |
| Deogracias Maligalig | 23 | " | " | " |

3. That according to the areas expropriated in the complaint in this case, the assessed valuation of the said parcels of land are as follows:

| Name. | Lot. | Area (sq. M.). | Rate (sq. M.). | Assessed value. |
|---|---|---|---|---|
| Romana Velasquez.... | 21 | 16,094 | 0.03 | P482.82 |
| " " .... | 21*a* | 5,250 | .03 | 157.50 |
| " " .... | 21*b* | 3,497 | .03 | 104.91 |
| Melecio Allarey..... | 22*a* | 1,830 | .16 | 292.80 |
| " " ..... | 22*b* | 862 | .16 | 137.92 |
| " " ..... | 22*c* | 119 | .16 | 19.04 |
| " " ..... | 22*d* | 35 | .16 | 5.60 |
| " " ..... | 22*e* | 49 | .16 | 7.84 |
| Deogracias Maligalig... | 23*a* | 1,573 | .23 | 361.79 |
| " " ... | 23*b* | 1,512 | .23 | 347.76 |
| " " ... | 23*c* | 1,466 | .23 | 337.18 |
| " " ... | 23*d* | 1,422 | .23 | 327.06 |
| Total ..... | | | | P2,582.22 |

6 Wherefore, plaintiff prays that an order be entered by this court directing that plaintiff shall have the right to enter immediately upon the possession of the land involved, after and upon the deposit by it with the Treasurer of the Philippine Islands of the sum of P2,582.22, Philippine Currency, the value of the land, in money, as hereby provisionally ascertained and fixed, the said sum to be held by the Treasurer of the Philippine Islands subject to the order and final disposition of the Court.

That the court, in deciding the foregoing motion, issued an order dated January 22, 1913, which reads as follows:

*Order.*

This case is before the Court for hearing on plaintiff's motion, dated January 22, 1913, praying for leave to deposit with the Treasurer of the Philippine Islands the sum of twenty-five hundred and eighty-two pesos and twenty-two centavos (P2582.22) Philippine Currency, being the assessed value of the lands sought to be condemned for the Lucena Railroad station site, and asking for the right to enter immediately upon the possession of the lands involved, after the said sum shall have been deposited with the Treasurer of the Philippine Islands to be held by the Treasurer of the Philippine Islands subject to the order and final disposition of the Court.

Upon consideration, it is hereby ordered that the plaintiff shall have the right to enter immediately upon the possession of the land involved after and upon the deposit by it with the Treasurer of the Philippine Islands of the sum of twenty-five hundred and eighty-two pesos and twenty-two centavos (P2582.22) Philippine Currency,

the value of the land in money, as hereby provisionally as-
7 certained and fixed, and the said sum to be held by the Treasurer of the Philippine Islands subject to the order and final disposition of the Court. Upon filing with the clerk of this Court a receipt for the same, or a statement from the said Treasurer that the sum has been deposited, let an order be issued placing the plaintiff Company in possession of the land described in the complaint.

That on the 28th of January, 1913, the defendant Romana Velasquez filed the following motion:

*Motion.*

Now comes Romana Velasquez, one of the defendants in the above entitled case and to the honorable court sets forth that some months ago she sold and transferred the land described in paragraph 3 of the complaint to Messrs. Simeón Pérez and Filemón Pérez, and therefore should be excluded as a defendant in these proceedings.

That the plaintiff, on February 1, 1913, filed a motion as follows:

*Motion.*

Now comes the Manila Railroad Company, plaintiff in the above entitled cause of action, and respectfully shows to the court that by a writing, which defendant calls a "motion," dated January 28, 1913, the defendant, Romana Velasquez, disclaimed all right and interest in and to the property, the object of the above entitled condemnation proceedings, alleging that she had sold prior to the presentation of the complaint in this case, the land described in paragraph 3 of the same to Simeón Pérez and Filemón Pérez.

8 Wherefore, plaintiff prays that the said Simeón Pérez and Filemón Pérez be included as defendants in this action as having an interest in the subject matter of the same, and that a summons and a copy of the complaint be served upon each of them requiring their appearance, as provided by law in such cases

That the court, on February 4, 1913, issued the following order:

*Order.*

Whereas the order authorizing the deposit of the assessed valuation of the lands in the case at bar was signed outside of the province, and whereas the undersigned judge of the Court of First Instance has again been designated to preside in the province of Tayabas by Administrative Order No. 7 of the Department of Finance and Justice dated January 31, 1913.

By these presents the said order of the 22d of January, 1913, is hereby adopted and the same is again issued.

(Sgd.) HERBERT D. GALE,
*Judge of First Instance, 7th District.*

That the same court, on the 4th of February, 1913, issued the following:

*Order.*

The motion of the plaintiff showing to the Court that the defendant Romana Velasquez disclaims all right and interest in and to the land, the subject-matter of this action, having sold the same to Simeón Pérez and Filemón Pérez prior to the presentation of the complaint herein, and asking that the said Simeón Pérez
9 and Filemón Pérez be included as defendants in the case, came on this day for hearing.

It appearing to the Court that the facts set out in said motion are true, and that the said Simeón Pérez and Filemón Pérez have an interest in the lands described in the complaint filed herein. It is hereby ordered that the said Simeón Pérez and Filemón Pérez be, and they are hereby included as defendants in this case, and that a copy of the complaint and a summons be served upon them requiring them to appear and answer the complaint, and that they be served with a copy of plaintiff's motion and this order.

That the defendants, through their attorneys, entered their appearance on the 11th of February, 1913, and that on the 17th of the same month they answered to the complaint as follows:

Now come the defendants in the above entitled proceedings through their attorneys and in answer to the complaint set forth:

First. That they are the true owners of the parcels of land described in paragraph three of the complaint and that the true and just value of each and all of them is respectively five pesos (P5.00) per square meter of extent.

Second. The defendant Romana Valasquez further separately alleges that parcel No. 21 referred to in paragraph 3 of the complaint is no longer her property and that at the present time it belongs to Mr. Francisco Icasiano, a resident of the city of Manila, P. I.; that also parcels Nos. 21*a* and 21*b* are no longer hers for the reason that she has transferred them to Messrs. Simeón Pérez and Filemón Pérez, with the exception of a portion of No. 21*b* which extends from the small stream indicated on the plan which accompanies
10 the complaint, as far as the property of Deogracias Maligalig.

Third. The defendant Simeón Pérez furthermore separately alleges that prior to the filing of the complaint he had commenced to build on one of the parcels sought to be expropriated by the plaintiff, a storehouse with the object of renting it for the purpose of storing merchandise therein; that the construction of the said building was suspended by order of this court at the instance of the plaintiff; that the amount expended by said defendant on the work

of building the said storehouse up to the time of the suspension thereof, for materials which could not now be used, such as nails, cement, gravel, sand, etc., amounted to sixteen pesos (P16.00); that the amount expended by the said defendant in wages of the foreman, carpenters and laborers up to the time of stopping the work, amounted to three hundred and seventeen pesos (P317.00); that in order to demolish the work already done and to again perform it the said defendant would have to expend the sum of four hundred pesos (P400.00); that for the delay in the work the defendant is injured in the amount of twelve pesos (P12.00) per diem, that being the true and reasonable rental of the said storehouse when it is finished.

Wherefore each and all of the defendants pray the court to order the plaintiff to pay to each and all of them an indemnity at the rate of five pesos (P5.00) per square meter of land and the costs of these proceedings.

The defendant Simeón Pérez furthermore prays that the plaintiff be ordered to pay him the sum of seven hundred and thirty-three pesos (P733.00) as damages for having to demolish the work performed on the storehouse and removed it to another site, and an additional sum of twelve pesos (P12.00) per diem for the rentals which he has failed to collect on account of the delay in the work.

That on the 24th of February, 1913, the plaintiff filed the following motion:

*Motion.*

Now comes the Manila Railroad Company, plaintiff in the above entitled cause of action and respectfully shows to the Court:

That by an answer filed by the law firm of Singson, Ledesma and Lim, under date of February 17, 1913, in which said attorneys signed as attorneys for "Los demandados" it is set forth that the defendant Romana Velasquez sold parcel No. 21 on the plan filed with the complaint to Francisco Icasiano, a resident of the City of Manila, P. I.

Wherefore, plaintiff prays that the said Sr. Francisco Icasiano be included as defendant in this action, as being an interested person in the subject matter of the same, and that a summons and a copy of the complaint be served upon him, requiring his appearance as required by law in such cases.

That the court, in ruling upon the foregoing motion of the plaintiff, on the 7th of March, 1913, dictated the following order:

*Order.*

It appearing to the Court from the motion filed by the attorneys for plaintiff under date of February 24, 1913, and the answer to the complaint, filed under date of February 17, 1913, on behalf of the defendants who have already been made parties

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12 to this suit, that Francisco Icasiano, of the City of Manila, P. I., has an interest in the land described in the complaint filed herein, it is hereby ordered that the said Francisco Icasiano be, and he is hereby included and made a defendant, and that a copy of the complaint and summons be served upon him, requiring him to appear and answer the complaint within the time prescribed by law in such cases.

That the defendant Mr. Francisco Icasiano, through his attorneys, entered his appearance on the 18th of March, 1913, and on the same date filed the following

*Answer.*

Now comes the defendant Francisco Icasiano, and in answer to the complaint in the above-entitled case sets forth:

That he is the owner of the parcel of land described in the third paragraph of said complaint as parcel No. 21 on the plan, measuring 16,094 square meters in extent, and that the value of the said parcel is five pesos (P5.00) per square meter.

Wherefore this defendant prays the court to order the plaintiff to pay him an indemnity for the expropriation of his land at the rate of five pesos (P5.00) per square meter and the costs of the trial.

That on the 16th day of April, 1913, on petition of both parties to these proceedings, the court issued an order, naming Messrs. Pablo Pajarillo, Honorio Lanuza and Federico Unson as commissioners of appraisal to hear the parties in this case, to inspect the property sought to be expropriated and to fix the amount of the indemnity which should be paid for the same; that the said

13 commissioners of appraisal, after having duly taken the oath of their office and after due notification to the parties, on the 6th and 7th days of June, 1913, went upon the property sought to be expropriated and took all the evidence submitted by the parties and on the 10th of June said commissioners submitted to the court the following

*Report.*

To the honorable judge of the Court of First Instance of Tayabas.

SIR: In compliance with the order dictated by this court in the above-entitled case on the 16th of April, 1913, the undersigned, Federico M. Unson, Pablo Pajarillo, and Honorio Lanuza, appointed commissioners of appraisal, have the honor to make the following report:

On the 23d of April, 1913, we sent notice to all of the parties to these proceedings of the day, date and hour of the inspection of the properties to be expropriated and of the hearing, but on the request of the attorneys for the plaintiff, they were continued until this month of June instead of May. In addition to sending notices

to the interested parties, copies were posted in the postoffice and the provincial and municipal buildings in the interest of the community. Copies of said notices are subjoined hereto.

The indicated day and hour having arrived, that is, the 6th of June, 1913, both parties being present with their respective attorneys, Mr. R. Lacson for the plaintiff and C. Ledesma for the defendants, with the plans in hand we went upon the lands of the interested parties. These latter, furthermore, showed us
14 their respective parcels inch by inch.

On the following day, that is, the 7th of June, 1913, the day fixed for taking all the evidence and hearing the arguments of both parties, we constituted ourselves in open session in the court room of the Court of First Instance and there both parties, with the assistance of their respective attorneys, adduced evidence, both parol and documentary. The evidence was reported by Mr. Luciano L. Santos, to whom the oath was administered before he entered on the performance of his duties as stenographer. The oath was also administered to all of the witnesses before taking their testimony.

From the evidence it appears that the parcels marked with the numbers and letters 21*a* and 21*b* on the plan were sold by Mrs. Romana Velasquez to her son-in-law, Don Simeón Pérez, and to her grandson Don Filemón Pérez; that No. 21 also was sold by the said Mrs. Romana Velasquez to Don Francisco Icasiano; that the parcel belonging to this latter was occupied and used by the plaintiff company from the 7th of August, 1912, for the main railroad line, and those belonging to Messrs. Pérez from the beginning of last February. The parcels that bear the numbers and letters 22, 22*a*, *b*, *c*, *d*, and *e*, belong to Don Melecio Allarey, but No. 22 without letter has been already paid for and those marked 23*a*, *b*, *c*, and *d*, belong to Deogracias Maligalig, and his own, together with No. 23 without letter being also paid for by the plaintiff.

The value of lands around the provincial government center has greatly increased during the past four or five years in this part of the country; first, on account of the erection of the provincial building and the high school; second, by reason of the
15 construction of dwellings for the most prominent persons of this locality in the neighborhood of the government building; and third, because of the increase in the number of inhabitants. Even before the coming of the railroad the town was growing in the direction of the puerto de Cotta, so that the value of land near Cotta was quoted at P2.00 up per square meter, according to the importance and situation of the land. This happened when it was known that the railroad was to be built toward the north of the town in the direction of the cemetery, that being the first plan of the engineers. But the change in the route of the railroad and and the building of it in the direction of the same locality has undoubtedly greatly influenced the rise in the prices of the same lands. Hence we note the uniformity of the testimony of the witnesses in appraising the lots around the government building and the

lands expropriated, their estimates varying from P4.00 upwards, principally the lots bordering the main road leading to Cotta.

Nevertheless, taking into consideration the benefits which will accrue both to the defendant land owners and the plaintiff company by the installation of the railroad, we, the commissioners, after careful and lengthy consideration of the matter, having before us the notes of the testimony of the witnesses and the plans of the properties, taking as a base and with a reduction of 25 centavos from the testimony and appraisement of the only witness of the plaintiff, Mr. Cayo Alzona, provincial fiscal of Tayabas, we unanimously fix the following values:

Parcel No. 21, that of Mr. Francisco Icasiano, at P2.00 per square meter—its price before the coming of the railroad.

16 Parcel No. 21-*b*, that of Messrs. Perez, at P3.75 per square meter.

Parcel No. 21-*a*, that of Messrs. Perez, at P3.50 per square meter.

Parcels Nos. 22-*a*, *b*, *c*, *d*, and *e*, belonging to Mr. Melecio Allarey, at P2.00 per square meter, and parcels 23-*a*, *b*, *c*, and *d*, property of Mr. Deogracias Maligalig, at P2.00 per square meter.

These differences in values are due to the topographical situations, the time of their acquisition, and the advantages and disadvantages for the parties interested. For example, lot No. 21 was occupied by the company on the 7th of August, 1912, four years after the provincial government was established; lots 21-*b* and 21-*a* in February, 1913, after the railway line from Lucena to Manila was constructed and in operation as were also Nos. 22-*a*, *b*, *c*, *d*, and *e*, and 23-*a*, *b*, *c*, and *d*. Lot No. 21-*b* has been assessed at P3.75 because it is between the provincial government building and the railroad and is situated on the main highway and the road leading to the railroad station. No. 21-*a* is quoted at P3.50 on account of the depreciation of the rest of the lands which now only measures 7 meters wide on the west or alongside the street and on the east 3.230 meters deep approximately, or from west to east which is also on the main road to Cotta. The lands of Melecio Allarey and Deogracias Maligalig are assessed at P2.00 because those of the last named, although somewhat inferior, will be greatly depreciated in market value because on the north it will leave a strip forming an acute angle toward the west and on the east about 10 meters wide by 30 meters long, more or less.

17 The losses and damages actually occasioned to Don. Simeon Perez, which consist of the erection of a storehouse and for the carpentry work, excavations, cement, masonry, stone and gravel and their removal to another site, which would be the adjoining lot, we estimate at P600.00. We do not allow losses and damages for rentals because Don Simeon Perez himself has said that he does not want to remove his camarin to another place, from which difference should be computed his rentals with those which he would have earned if the building of the said storehouse had been continued, because it would be located quite some distance away from the station, the center of commerce.

For all of the foregoing considerations we submit this report to

the honorable judge of first instance for his approval thereof together with the bill of fees for the actual days employed by us in the work of assessment.

Lucena, June 1, 1913.

(Sgd.) FEDERICO UNSON,
" PABLO PAJARILLO,
" HONORIO LANUZA,
*Commissioners of Appraisal.*

That after the commissioners had filed the foregoing report the litigating parties also presented their respective memorandums in which they recorded their objections to the report and, on August 1, 1913, counsel for the defendants filed the following document:

Messrs. Kincaid & Hartigan:

By these presents you are hereby notified that in view of the report of the commissioners appointed in the above-entitled
18 case, which report was filed on June 10, 1913, and the respective memorandums of both parties in the record, the undersigned counsel for the defendants will petition the court on the 7th of August, 1913, at 9 o'clock a. m., to enter judgment in this cause.

Manila for Lucena, Tayabas, August 1, 1913.

(Sgd.) SINGSON, LEDESMA & LIM.

That on the 20th of October, 1913, the court entered the following:

*Order.*

On the 13th of June, 1913, the report of the commissioners appointed in accordance with the provisions of section 243 of Act No. 190, together with a record of all the proceedings had before them, was admitted to the record of this case, and after the respective parties had filed their memorandums with respect to the report in the course of the month of July following, by stipulation of the parties the case was heard on the 29th of August, 1913 in the session room of the court house at Batangas. The report was submitted for the consideration of the court, cousel for both sides were heard and said counsel filed additional memorandums in the month of September following. The last one submitted, that of the counsel for the defendants, was filed on the 29th of September.

Both in his oral argument at the hearing above indicated and in his written argument presented afterward, counsel for the plaintiff entity has called the attention of the court to the fact that the defendants have not yet proved the claim set up in their answer of ownership of the respective parcels of land which the plaintiff is
19 endeavoring to expropriate. He claims that they must of necessity establish their ownership by proper proof as the plaintiff in his complaint has not recognized them to be the legitimate owners of the said parcels. He asks that, before the court consider the report prepared by the commissioners and make such

decision as seems proper in the premises, that it order the defendants to adduce evidence in support of their alleged claim of ownership. Counsel for defendants opposed this claim of the plaintiff and in the written brief he recently filed he has set out in greater detail the arguments that he made orally on the subject during the trial of the case.

Plaintiff, after setting forth in paragraph 3 of his complaint who are the occupants of the parcels of land here in question, alleges in paragraph 4 the following: "That the plaintiff company has not been able to acquire by means of an extrajudicial agreement the different parcels which compose the foregoing tract, because, notwithstanding the most careful investigation it has been unable to discover who are the true owners thereof; wherefore, as the ownership is uncertain, it cites as defendants all persons who own or claim to own or occupy the various parcels of land which, taken together, compose the tract herein described." As may be seen by this allegation of the plaintiff, under the provisions of section 3 of Act No. 1258, he brings into question the ownership of the defendants to the aforesaid parcels of land. This question was taken up by the defendants in their answer and they alleged themselves to be the owners of the lands. No proof on the subject was submitted to the committee appointed nor indeed did the said committee have any authority to take any, for its powers, according to section 243 above cited, are restricted to proceedings having for their object the fixing of the amount of indemnity to be paid for the expropriation.

Wherefore, the court being of the opinion that the claim of the plaintiff on the point in question is a legitimate one, the defendant is hereby ordered to adduce evidence to reestablish their alleged ownership and for that purpose the court sets for the hearing the first day of the November ordinary session, in the Court of First Instance of Tayabas, at eight o'clock in the morning. The court will reserve its decision on the report of the commissioners until afterwards.'

So ordered.

(Sgd.) MARIANO CUI,
*Judge of the 7th Judicial District.*

Batangas for Lucena, Tayabas, October 20, 1913.

That after the hearing of this case on the 20th of November, 1913, the court entered the following decision on the 2d of February, 1914:

*Decision.*

These proceedings refer to the expropriation of twelve parcels of land, situated in the barrio of Cotta, Municipality of Lucena, Province of Tayabas, the description and measurements of which are set forth in detail in the plan which accompanies the complaint. The plaintiff brings the said expropriation proceedings by virtue of the powers conferred upon it by Acts Nos. 1510 and 1905,

21 because it alleges in its complaint that it was unable to acquire the said twelve parcels by any extrajudicial agreement as, in spite of the careful investigation made by it, the said company was unable to determine who were the true owners thereof. For that reason it cited as defendants all persons who possess, or claim to possess, or occupy the parcels referred to.

On petition of the plaintiff this court issued an order dated the 22d of January, 1913, whereby the petitioner, after first depositing the sum of P2582.22, the assessed value of the property sought to be expropriated, was ordered to be placed in possession of the same and on the 29th of the same month the sheriff of the Province of Tayabas put the said order into force.

By a written petition of the 28th of January, 1913, defendant Romana Velasquez asked that she be excluded as such defendant from these proceedings, alleging that some months previously she had transferred and sold the three parcels of land alleged in the complaint to belong to her, to Simeon Perez and Filemon Perez. In consequence the court, by an order dated the 4th of February following, ordered that the said purchasers should be included and cited as defendants in these proceedings.

Counsel for all of the defendants presented an answer to the complaint alleging that his clients are the true owners of the parcels of land mentioned in paragraph three of the complaint and that the true and just value of all and of each of them is P5.00 per square meter. He further alleges that parcel No. 21 mentioned in the said paragraph no longer belongs to Romana Valesquez, and that at present it belongs to Francisco Icasiano, a resident of the city of Manila; that the said defendant Velasquez no longer owns

22 parcels Nos. 21-*a* and 21-*b* of the same paragraph as she has transferred them to the defendants, Simeon Perez and Filemon Perez, with the exception of a portion of parcel No. 21-*b*, which runs from the rivulet indicated on the plan which accompanies the complaint as far as the property of the other defendant Deogracias Maligalig. He also alleges that before the filing of the complaint the defendant Simeon Perez, commenced to build on one of the parcels the plaintiff seeks to expropriate a storehouse for the purpose of renting it out for the storage of merchandise and that the work of construction was suspended by order of the court at the instance of the plaintiff; that the amount expended by the defendant Simeon Perez in constructing the said camarin or storehouse up to the time of the stoppage of the work, for materials which could not again be used, such as nails, cement, gravel, sand, and other things, amounted to the sum of P16.00; that the amount expended by the defendant in wages for the foreman, carpenters and laborers up to the time of stopping the work on the said camarin amounted to the sum of P317.00; that in order to undo the work already performed and to do it over again, defendant would have to expend about P400.00; and that for the delay in the performance of the work the defendant has suffered damages in the amount of P12.00 per diem, that being the true and reasonable rental value of the said storehouse once finished. He prays that the plaintiff

be ordered to pay to each and all of his clients an indemnity at the rate of P5.00 per square meter of land. He further prays that the plaintiff be ordered to pay to the defendant Simeon Perez the sum of P733.00 as damages for demolishing the work already performed on the storehouse and for removing it to another site and an additional sum at the rate of P12.00 per diem for the
23 rentals which he fails to receive on account of the delay in the performance of the work.

In view of the fact shown in the answer we have been discussing, that parcel No. 21 of the defendant Romana Velasquez is the property of Francisco Icasiano, the court on petition of the plaintiff company, ordered that the said Icasiano be cited and included as defendant in this action. Thereupon the said Icasiano appeared and answered to the complaint, alleging that he is the owner of the said parcel No. 21 and that the value of the same is P5.00 per square meter; he asked that the plaintiff be ordered to pay him for the expropriation of his land at that price per square meter.

Commissioners were appointed for the purpose enumerated in section 243 of Act No. 190, who proceeded to inspect the lands sought to be expropriated and take the evidence submitted by both parties in this case. They later prepared their report, which, together with the record of all the proceedings, they have filed with the court.

After the said report was filed, counsel for the plaintiff company moved that the defendants be required to prove their title to the respective parcels, object of the present proceedings, and the court decided their motion in conformity with the plaintiff's petition.

From the evidence submitted in support of the title of the defendants to their respective lands, the expropriation of which is the object of the present action, it is satisfactorily proved that the parcels 21, 21-*a* and 21-*b* were formerly a part of a tract of 38 hectares, 88 ares and 49 centares in extent, described as the first par-
24 cel in the title by composition issued to Faustino Enriquez, the original owner, on the 12th of December, 1888; that by virtue of the will executed by this latter on the 17th of March, 1891, prior to his death on the 2d of April following, a will which was probated on the 21st of November, 1905, and in accordance with the extrajudicial partition which was effected a long time prior to the said probate by the heirs of the late Faustino Enriquez of the property of the decedent subject to the provisions contained in the said will (a partition which was sanctioned by the court) part of the said land was adjudicated to the heirs Pilar and Hilaria Enriquez and part to the other heirs. Perpetua and Concepcion Enriquez. These latter, on the 28th of January, 1910, sold this portion to Emerenciana Cordero, who in turn on the 9th of May of the same year, sold and transferred it to the defendant Romana Velasquez who also acquired in the same manner on the 13th of January, 1911, from Pilar Enriquez, the part which corresponded to her in the aforementioned partition; that of the lands she purchased from Pilar, Perpetua and Concepcion Enriquez, Romana sold a portion, the one numbered 21, to Filemon Perez on the 21st

of July, 1912, and a part which included Nos. 21-*a* and 21-*b* to Simeon Perez and his wife on the 9th of November of the same year; that the part which was bought by Filemon Perez was afterwards sold by him on the 16th of August of the same year 1912, to the defendant Francisco Icasiano, who in turn transferred it by sale on the 26th of May, 1913, to the company known as the "Tayabas Land Co."; that Simeon Perez, one of the defendants herein, also sold parcels Nos. 21-*a* and 21-*b* to the said company on the 1st of July, 1913.

It has also been proven that about 25 years ago the defendant Melecio Allarey acquired by purchase from the late Santiago
25 Lopez the land from which has been segregated the parcels marked 22-*a*, 22-*b*, 22*c*, 22-*d*, and 22-*e* on the plan submitted by the plaintiff and that the documents regarding the acquisition thereof were destroyed in the last fire which took place at Lucena, Tayabas, on the 19th of September, 1913; that the said defendant has ever since remained in *quite*, public and continuous possession as owner up to the present time; and that recently, on the 1st of July, 1913, the said defendant sold the said parcels to the "Tayabas Land Co."

It was also shown that the land which was subdivided into parcels marked 23-*a*, 23-*b*, 23-*c* and 23-*d* on the plaintiff's map, formerly belonged to Toribia Abastillas; that Toribia died more than twenty years ago, leaving the land to Deogracias Maligalig, who since that time has possessed and still possesses it as owner thereof without any interruption, without anybody disturbing him in the said possession, the said defendant having obtained by composition a title of ownership to the said land which is inscribed in his name in the property registry; and that the said defendant on the 1st of July, 1913, sold the said parcels to the same Tayabas Land Company.

The property titles to the lands which plaintiffs seek to expropriate and which have been exhibited by the defendant and their predecessors in interest therein have been duly shown to be valid, as were also the transfers of the said lands to the Tayabas Land Company.

There is no dispute as to the right of the plaintiff company to expropriate the lands here in question and the only point of dispute is in fixing the amount of indemnity to be paid for the expropriation thereof.

26 In order to decide this question the court relies upon the report filed by the commissioners and dated the 10th of July, 1913; it is of the opinion that the said report should be accepted in all of its parts because it is based on the result of the evidence; that the value fixed in the said report are just and reasonable, to wit: P3.75 per square meter for the parcel 21-*b*, P3.50 per square meter for parcel 21-*a*, and P2.00 per square meter for the rest of the parcels 21, 22-*a*, 22-*b*, 22-*c*, 22-*d*, 22-*e*, 23-*a*, 23-*b*, 23-*c* and 23-*d*, and that the valuation made in the report referred to with regard to the damages actually caused to the defendant Simeon Perez is reasonable and equitable.

Therefore, the court, in deciding this action, decrees that the

plaintiff company is entitled to expropriate the parcels of land marked Nos. 21, 21-*a*, 21-*b*, 22-*a*, 22-*b*, 22-*c*, 22-*d*, 22-*e*, 23-*a*, 23-*b*, 23-*c* and 23-*d*, with the metes and bounds thereof as appear on the plan of the said plaintiff; that the parcels Nos. 21, 21-*a*, and 21-*b* were formerly the property of the defendant Romana Velasquez and latterly, after successive and lawful transfers, became the property of the Tayabas Land Co.; that the parcels Nos. 22-*a*, 22-*b*, 22-*c*, 22-*d*, and 22-*e* formerly belonged to the defendant Melecio Allarey, but afterwards passed into and are now in the hands of the said company by a valid transfer by sale; and that the parcels Nos. 23-*a*, 23-*b*, 23-*c*, and 23-*d* were also the property of the defendant Deogracias Maligalig but now belong to the said company under the same title. In consequence, the court adjudicates to the plaintiff the ownership and dominion of the said parcels within the metes and bounds set forth in the plan specified, and orders that the said plaintiff pay to the Tayabas Land Company, the legitimate successor in in-
27 terest to the defendants, for the expropriation of parcel No. 21-*b* the sum of P19,687.50; for that of parcel No. 21-*a*, P18,375.00; for that of parcel No. 21, P32,188.00; for that of parcel No. 21-*a*, P3,660.00; for that of parcel No. 22-*b* P1,724.00; for that of parcel No. 22-*c*, P238.00; for that of parcel No. 22-*d*, P70.00; for that of parcel No. 22-*e*, P98.00; for that of parcel No. 23-*a*, P3,146.00; for that of parcel No. 23-*b*, P3,024.00; for that of parcel No. 23-*c*, P2,032.00; and for that of parcel No. 23-*d*, P2,844.00; the defendant shall pay legal interest on all of these amounts from the date on which it entered into possession of the said parcels until full payment is made therefor. The plaintiff company is furthermore ordered to pay to Mr. Simeon Perez the sum of P600.00 by way of losses and damages for the suspension of the work upon his storehouse and its transfer to another site. Upon payment of the amounts herein ordered there shall be returned to the plaintiff company the deposit of P2,582.22 which the latter paid into the Insular Treasury in order to enter into immediate possession of the lands here expropriated. The costs of this action shall be assessed against the plaintiff company.

The commissioners of avaluation having presented their bill of costs dated June 10, 1913, and none of the items therein having been impugned by the plaintiff, it is hereby ordered that the plaintiff pay to the said commissioners the sum of P68.00, the total amount of the said bill.

So ordered.

Batangas (for Lucena, Tayabas) February 2, 1914.

(Sgd.) MARIANO CUI,
*Judge 7th District.*

28 That the plaintiff, on the 9th of February, 1914, filed the following

*Exception and Motion for a New Trial.*

Now comes the plaintiff in the above entitled cause of action, and referring to the decision of this Court of the second of February, 1914, notice of the rendition of said decision having been received this day, excepts to the same, and moves for a new trial for the following reasons, to wit:

1. That none of the defendants in the above entitled cause of action have established any right or interest in the property sought to be condemned.

2. That the court has ordered damages to be paid to a party (the Tayabas Land Company) not a party to the action.

3. That the damages assessed by the commissioners in their report presented by them and the value of the land as assessed by the said commissioners and as found by the Court are absurdly excessive and exhorbitant and beyond the bounds of reason.

4. That the damages assessed by the said commissioners and the value of the land as estimated and found by the Court are so exhorbitant and far in excess of the true and reasonable value thereof as to indicate prejudice on the part of the commissioners inasmuch as they have assessed the land in question at more than thirty times its true market value.

5. That the said commissioners in arriving at their estimate of value and damages have not based said estimate on correct principles of law.

6. That the said report presented by the said commissioners is insufficient in that it contains no means of determining
29 whether or not they properly weighed the evidence taken at the various hearings.

7. That the damages assessed are too remote, artificial, speculative and imaginary.

8. That the said report shows on the one hand that the said commissioners have taken into consideration elements which ought not to be considered, while at the same time they have failed to consider other elements which should have been considered, all of which goes to make the awards unreasonably excessive and exhorbitant and thereby operates to the injury of the plaintiff.

9. That the said report is too vague and indefinite.

10. That the court erred in approving the said report and award.

11. That the decision of this court of the second of February, 1913, [1914] is manifestly contrary to the weight of the evidence.

12. That the decision of this court of the second of February, 1914, is contrary to the law.

That the defendants also, on the 17th of February, 1914, filed the following

*Exception and Motion for a New Trial.*

Come now the undersigned attorneys in representation of the defendants and set forth that they except to the decision of this court

entered on the 2d of February, 1914, of which they were notified on the 7th of the present month, and move for a new trial for the following reasons:

1. That the decision rendered in this case is highly prejudicial to the interests of the defendants.
2. Because the decision is openly and manifestly contrary to the weight of the evidence.
3. Because the same is contrary to the law.

Manila, for Lucena, Tayabas, 17 February, 1914.

(Sgd.) LEDESMA, LIM, & IRURETA GOYENA.

That the court, on the 26th of February, 1914, in ruling on the exceptions and motions for a new trial filed by both parties to the suit, issued the following:

*Order.*

The exceptions and motions for a new trial presented by stipulation of both parties have been duly considered and the motions for a new trial are hereby denied. Both parties appellant will file their respective bills of exception within the legal period, together with the transcription of the stenographic notes taken in these proceedings.

Lucena, Tayabas, 26 February, 1914.

(Sgd.) GEO. R. HARVEY,
*Judge 7th District.*

That both of the litigating parties, on the 5th of March, 1914, filed the following stipulation:

*Stipulation.*

It is hereby stipulated between the plaintiff and the defendant that they will file but one sole bill of exceptions, common to both of the parties, and that they will share the cost of printing the same between them.

Manila, for Tayabas, March 5, 1914.

(Sgd.) KINCAID & HARTIGAN.
" LEDESMA, LIM, & IRURETA GOYENA.

That on the 9th of March, 1914, both litigating parties filed another stipulation wherein they prayed the court to allow an extension of fifteen days for the filing of this bill of exceptions, as on account of the size of the record they stated that they were unable to file the said bill until that date. The extension prayed for was granted by the court.

That the defendants, on the 12th of March, 1914, excepted to the order denying the new trial prayed for by them; and that the plaintiff, on the 13th of the same month and year, also filed its exception to the order of the court denying the motion for a new trial presented by plaintiff, and at the same time notified the court of its

intention to file this bill of exceptions in order that the Supreme Court of the Philippine Islands might review the judgments, orders, and decrees issued in these proceedings.

For all the foregoing both litigating parties, plaintiff and defendant, jointly submit this bill of exceptions and pray that it be approved and certified by the judge and sent to the clerk of the Supreme Court by the clerk of this court, together with all of the documentary and parol evidence presented at the trial, and the memorandums and reports presented by the parties, all of which are made an integral part of this bill of exceptions.

Manila, for Tayabas, P. I., March 14, 1914.

(Sgd.) WILLIAM A. KINCAID,
THOMAS L. HARTIGAN,
By E. A. PERKINS,
*Attorneys for Plaintiff.*

(Sgd.) LEDESMA, LIM & IRURETA GOYENA,
By MARIANO LIM,
*Attorneys for Defendants.*

32 UNITED STATES OF AMERICA,
*Philippine Islands:*

Court of First Instance of the Province of Tayabas, Seventh Judicial District.

Civil No. 879.

THE MANILA RAILROAD CO., Plaintiff,

vs.

ROMANA VELASQUEZ et al., Defendants.

Expropriation Proceedings.

*Order.*

Attorney E. A. Perkins having submitted the bill of exceptions filed jointly by the attorneys for both parties in this case, the said bill of exceptions is hereby approved, without prejudice to deciding on the 13th of this month the motion filed by the manager of the Tayabas Land Company.

Therefore the clerk of this court is hereby ordered to forward to the Honorable Supreme Court of these Islands the said original bill of exceptions, together with the documents and evidence submitted during the trial of the case, in order that the questions raised in the said bill may be considered by the said Supreme Court in accordance with the law.

Lucena, Tayabas, P. I., April 8, 1914.

(Sgd.) GEO. R. HARVEY,
*Judge 7th District.*

33 UNITED STATES OF AMERICA,
*Philippine Islands:*

Court of First Instance of Tayabas, 7th Judicial District.

Civil Case No. 879.

THE MANILA RAILROAD CO., Plaintiff,

vs.

ROMANA VELASQUEZ et al., Defendants.

Condemnation Proceedings.

Session of December 2, 1913, at 11 o'clock a. m., in the Municipality of Lucena, Province of Tayabas, P. I., presided by the Honorable Mariano Cui, Judge of the 7th Judicial District.

Attorney E. Perkins appeared for the plaintiff company and Attorney Tirso Loreta Goyena for the defendants.

34 Loreta Goyena: I submit in evidence and as Exhibit 2 of the defendants, a deed of sale to Romana Velasquez of parcel No. 21.

Perkins: I reserve my right to file an objection with regard to that document after a translation of it has been filed, because I do not understand Tagalog.

Court: It would be better for you to withdraw it for the present and file it later with the report.

Loreta Goyena: Yes. In the same way, I here present this document, reserving it for the attorney for the plaintiff when the translation is filed, as Exhibit 3, of parcel 21. I also present as evidence this Exhibit 1, which is a receipt for the amount, and refers to parcels 21-*a* and 21-*b*. I also present in evidence and as Exhibit, No. 2, referring to parcels 21-*a* and 21-*b*, and Exhibit 4, of parcel 21. I present also as evidence and as Exhibit No. 3 of the parcels 21-*a* and 21-*b*, and as Exhibit 5 of the parcel No. 21, this document, with a writing in Spanish, composed of 6 folios. With respect to the two exhibits, I will present Mr. Alvarez as a witness.

Perkins: With regard to Exhibits 2 and 3 of parcel 21, I ask you honor to order that it appear of record that I reserve the right to object after the translation is filed.

Court: It is reserved.

Perkins: In regard to Exhibit 1 of parcels 21-*a* and 21-*b*, I object to its admission on the two following grounds: First, it is irrelevant because it is not a title, and in the second place it has not been identified. It has been certified before a notary and cannot be characterized as an instrument. As to Exhibit 2 of parcel 21-*a* and 21-*b*, which is also Exhibit 4 of parcel 21, I have no objection

35 with regard to the authenticity of the document, but as to its validity I object on the score that the land which is sought to be expropriated is not identified. With reference to Exhibit 3 of parcel 21-*a* and 21-*b*, which is also Exhibit 5 of parcel 21, composed of various documents, I object to the document which is found at the first folio as being irrelevant, because it is nothing but a receipt for a certain sum delivered by one person to another; furthermore, it lacks identification as referring to the land sought to be expropriated. With regard to the other folios which compose the document, I oppose their admission for lack of identification.

Court: So far as the identification is concerned, the objection may be ruled on.

SIMEON PEREZ. (He took the same oath as when he first testified.)

*Questions.*

Loreto Goyena: I here show you the document marked Exhibit 3 of parcel 21 and ask you to tell me whose signature appears thereon.

Perkins: I object to the question because I understand that my right to object was reserved to me.

Court: Overruled.

Perkins: I except.

A: It is that of Romana Velasquez.

Court: How do you know that it is Romana Velasquez'?

A. I know well that it is her signature.

36 Q. Were you present when she signed it?

A. No, sir.

Loreta Goyena: What relation is Romana Velasquez to you?

A. She is my mother-in-law.

Q. Have you ever had any occasion to see her sign?

A. Yes, sir.

Q. Have you seen her sign often?

A. Yes, sir.

Q. So that you are able to recognize her signature?

A. Yes, sir.

Q. Do you know what land is referred to by Exhibit 3 of parcel 21?

A. Yes, sir.

Q. What land does it refer to?

A. It is the land traversed by the railroad line; it is in the center where the line passes.

Q. In what place?

(Witness indicates the Lucena station.)

Q. Here is Exhibit 2 of parcel 21; please tell me whose signature is this?

A. That of Romana Velasquez.

Q. Do you know what land is referred to in Exhibit 2 of parcel 21?

A. Yes, sir.

Q. What land?

A. The last that the railroad company wanted to expropriate; the strip this side of the railroad track and another strip toward the north, a strip on the north of the center of the railroad line and another on the south of the same line.

37 Q. And in what place?

A. Here at the Lucena station itself.

Q. I here show you Exhibit 2 of parcels 21-*a* and 21-*b*, and Exhibit 4 of parcel 21; please tell me whose signature this is?

A. It is that of Pilar Enriquez.

Q. Do you know whose daughter is Pilar?

A. She is the daughter of Ambrosio Enriquez.

Q. Do you know the father of Ambrosio Enriquez?

A. Faustino Enriquez.

Q. Do you know what the land refers to that is here described in in this Exhibit 2 of parcels 21-*a* and 21-*b*, and No. 4 of parcel 21?

A. Yes, sir.

Q. To what land does it refer?

A. To this land that belongs to the part where it includes the railroad and part to the north of the same line.

Q. In what place?

A. Here along the line of the railroad.

Court: At what point does this land commence? Does it begin from the station, or where?

A. From the station towards the south of the station.

Q. Does not the road from Cotta reach it?

A. No, sir.

Q. That is to say, only a part of 21?

A. Yes, sir.

Q. How far is this parcel from the Cotta Road?

A. From the Cotta Road to this land is about 45 meters, more or less, because there is a creek in between.

38 Q. Does the creek still exist?

A. Yes, sir.

Q. Up to the present?

A. Yes, sir.

Q. The road crosses it then?

A. Yes, sir.

Loreta Goyena: I here show you Exhibit 3 of parcels 21-*a* and 21-*b*, and Exhibit 5 of parcel 21; please tell me whose signature appears thereon?

A. I know the signature; it is that of Perfecta Enriquez and Concepción Enriquez.

Q. Do you know whose daughter they are?

A. Yes, sir.

Q. Whose?

A. Zacarias Enriquez'.

Q. And whose son is Zacarias Enriquez?

A. He is the son of Faustino Enriquez.

Q. Do you know also what land is referred to in the first folio of Exhibit 3 of parcels 21-*a* and 21-*b* and Exhibit 5 of parcel 21?

A. To the northern part, where the railroad station at Lucena is situated.

Court: Where does this land start from; from the road?

A. No, sir; from the creek.

Q. As far as what point?

A. From the creek up to that land.

Q. Look at this plan and tell us where the land is.

A. This creek commences from the center with the lines crossed from the point "O" which is in the middle of the
39 road. From the north it reaches to the other side of the creek.

Loreta Goyena: And the folio following the first of this same Exhibit; what land does it refer to?

A. It is the same land.

Q. And what land do the rest of the folios refer to?

A. It is the same land.

Q. I show you Exhibit 1 of parcels 21-*a* and 21-*b* and ask you to tell the court whose signature appears thereon.

A. It is that of Romana Velasquez.

Q. Do you know what land is referred to in this document Exhibit 1 of parcels 21-*a* and 21-*b*?

A. Yes, sir.

Q. What land does it refer to?

A. It is on the other side of the creek—after the creek. (Witness indicates the marked portion which is situated at the northwest of the parcel belonging to Melecio Allarey on the other side of the creek to the west.)

Perkins: I repeat my offer with respect to all of these documents; I repeat my objections.

Court: Objection overruled and the documents admitted in evidence.

Perkins: Exception. I understand that your honor's ruling does not affect the documents in Tagalog?

Court: The documents in Tagalog excepted, because the right has been reserved to the attorney for the plaintiff to file his objection after the translations of them have been presented.

Perkins: No cross examination.

40 AGUSTIN ALVAREZ, 31 years of age, married, attorney-at-law, residing in the Municipality of Lucena, Province of Tayabas, P. I., after having been duly sworn, testified as follows:

Loreta Goyena: I here present to you folio 2 of Exhibit 3 of parcels 21-*a* and 21-*b*, and Exhibit 5 of parcel 21, and ask you to tell me who is Emerenciana Cordero?

Perkins: It is admitted as evidence.

Court: He may answer.

A. She is my wife.

Loreta Goyena: Nothing more.

Perkins: I do not wish to cross-examine.

Loreto Goyena: I also offer in evidence Exhibit X to show the ownership of the Tayabas Land Co. of the parcels that are the object of these proceedings. It is a certificate of a notary public in Manila, Don Ramon Crisólgo, which evidences the transfers by the owners to the Tayabas Land Company.

Perkins: I object because, according to the decision of the Supreme Court, notaries public have no authority to issue certificates; besides, it is not the best proof; it is wholly irrelevant.

Court: The best proof should always be presented. The objection is sustained; it will not be admitted in evidence.

Loreta Goyena: I offer as proof of the ownership of the Tayabas Land Company over the lands here in question, the deeds of sale which may be marked as Exhibit Z-1 to Z-12.

Perkins: In the first place I object to the admission of
41 these documents because they are not identified; and in the second place I object to them from numbers Z-1 to Z-11 because they are copies and not originals. At the last session Mr. Berbari promised to come in now with the documents themselves and here he is with copies.

Court: Objection sustained, with the exception of Exhibit Z-12.

Berbari: I went to Manila, your Honor, and Mr. Chicote and I tried to find the originals; we could not find them so I brought these copies.

Court: Let him testify.

CALIXTO BERBARI, 32 years of age, married, merchant, resident of the municipality of Lucena, Province of Tayabas, P. I., after having been duly sworn in accordance with law, testified as follows:

Loreta Goyena: Do you know where the originals of Exhibits Z-1 to Z-11 are?

A. Yes, sir; I had given them to Mr. Alfredo Chicote and I asked him for them when I went to Manila to get them. After searching for some days among a mass of documents that he has in his possession he told me that he had not been able to find the originals and instructed me to get a certificate from the notarial register, together with the copies.

Q. Were these copies in the possession of the notary?

A. Yes, sir.

On cross-examination:

Perkins: Did you yourself make any effort to find these documents?

42 A. Yes, sir; Mr. Chicote and I looked among a lot of his papers and we did not find the originals.

Q. Have you finished looking for them?

A. He told me that he would send them to me.

Q. Was it on account of the mass of documents that you could not find these?
A. Yes, sir; and now I can identify that the owners transferred their ownership.

Perkins: I repeat my objection.
Court: Identify them since the originals were not found.

Q. (Continuing:) Does the notary have copies of these documents?
A. The owners made duplicates; one original and a copy which remained in the possession of the notary.

DEOGRACIAS MALIGALIG. (He testified under the oath that he took when he first testified.)

Loreta Goyena: I present to you this document marked Z-1 and ask you to tell me whose signature appears here.
A. This signature of Deogracias Maligalig is mine.
Q. Tell us whose is the signature which appears in Exhibit Z-2.
A. That is also my signature.
Q. Tell us whose signature appears in Exhibit Z-3.
A. That is mine also.
Q. And the signature appearing in Exhibit Z-4?
A. Mine also.
Q. Nothing more.

Perkins: No cross-examination.

43 SIMEON PEREZ (under the same oath).

Loreta Goyena: Do you know whose signature this is that appears in Exhibit Z-5 and Z-6?
A. Yes, sir.
Q. Whose is it?
A. Mine.
Q. Nothing more.

Perkins: No cross-examination.

MELECIO ALLAREY (under the same oath).

Loreta Goyena: Do you know Jacinto Allarey?
A. He is my son.
Q. Do you know the signature of Jacinto Allarey?
A. Yes, sir.
Q. Are you familiar with the signature of your son Jacinto?
A. Yes, sir.
Q. If you saw his signature, would you recognize it?
A. Yes, sir.
Q. I present to you the documents marked from Z-8 to Z-11. Look at the signatures which appear on said exhibits and say whose they are.

A. All of the signatures appearing at the foot of those exhibits are of my son Jacinto Allarey.

Q. Here in these documents Jacinto Allarey appears as your attorney in fact. Did you grant any powers to your son?

A. Yes, sir.

Q. For what reason did you give them to him?

A. Because I could not go to Manila.

44 Q. For what object?

A. So that he could sell our lands to the purchaser that appears on these documents.

Court: So that you ratify these documents?

A. Yes, sir.

Loreto Goyena: I again offer them in evidence.

Perkins: You know, your honor, that the fact of not being able to find the original of a document can not be proof for admitting the copy.

Court: These documents are admitted, without prejudice to their being substituted by the originals in the event they are found, although these documents are ratified by the vendors themselves and the signatures of the vendors are duly identified.

Perkins: Exception. I ask your honor to declare in default all those persons that up to the present have been notified but who have not appeared, or who have knowledge of this case.

Court: I cannot declare them in default in that manner. Is there any defendant who has not answered the complaint?

Perkins: The Attorney-General. I only ask that the record show that all were held to be in default who were notified and did not appear.

Court: Very good.

Loreto Goyena: A translation of some of these documents will be presented and a copy of the translation will be furnished to counsel for plaintiff and he can make his objection.

45 Court: Very good. You can file your brief if you wish.

(Stenographer's certificate follows.)

Manila (for Lucena, Tayabas), June 16, 1914.

46 *Deed of Sale.*

We, the undersigned spouses, Andres Dinglasan and Leonila Leynes, of age, residents of the municipality of Lucena, Province of Tayabas, Philippine Islands, in consideration of the sum of one thousand two hundred twenty pesos (P1,220) Philippine currency, which has been paid to us by the spouses Juan de Vela and Cesaria Adel, both of age, and also residents of the municipality of Lucena, Province of Tayabas, Philippine Islands, by these presents set forth that we hereby sell and transfer to the said spouses Juan de Vela and Cesaria Adel, their heirs and assigns, one third part of a building lot without any improvements, measuring one hundred nineteen (119) meters and seventy (70) centimeters square, situated in the inhabited portion

of this municipality of Lucena, Province of Tayabas, Philippine Islands, within the metes and bounds as follows: bounded on the north by the lot of the heirs of Gabina Rallos; on the east by Calle Gardener; on the south by that of the purchasers themselves, Juan de Vela and Cesaria Adel; and on the west by the lot of Rita Jalbuena.

We hereby set forth that we have agreed and covenanted with the said spouses Juan de Vela and Cesaria Adel, that they are the absolute owners of the property, free of all charges and encumbrances, and that they may exercise the right of transfer of the same to others. We also set forth that we are responsible to the said spouses Juan de Vela and Cesaria Adel for the property, and we undertake to defend the title thereto now and always against any just claims presented by whomsoever.

In testimony whereof we sign these presents in Lucena, Tayabas, this sixth day of June, one thousand nine hundred and thirteen.

47 (Sgd.) LEONILA LEYNES.
ANDRES DINGLASAN.

Signed in the presence of
(Sgd.) VICENTE OROZA.
MANUEL ALCANTRA.

UNITED STATES OF AMERICA,
*Philippine Islands:*

Province of Tayabas.—In the municipality of Lucena, in the above mentioned province, this 6th day of June, 1913, before me personally appeared the spouses Andres Dinglasan and Leonila Leynes, whom I know to be the persons who executed the foregoing document and who ratified it as being an act of their own free will.

Don Andres Dinglasan exhibited his personal cedula No. F1,248,-500, issued in the municipality of Batangas, Batangas, on the 29th of April, 1913.

Doña Leonila Leynes, by reason of her sex, did not exhibit any cedula.

Before me,
(Sgd.) PEDRO M. NIEVA.
*Notary Public.*

My commission expires Dec. 31, 1914.

Register No. 31, pages 10, 11.

The undersigned, a duly commissioned notary public, certify that at the back of folios Nos. 10 and 11, entry number 31 in my notary register, there is registered and inscribed a deed of sale dated
48 June 6, 1913, executed by the spouses Don Andres Dinglasan and Doña Leonila Leynes, in favor of the spouses Don Juan de Vela and Doña Cesaria Adel, of a parcel of land without improve-

ments situated in the center of the town, for the sum of P1,200; the said land measures 119.70 square meters, with the following metes and bounds: bounded on the north by the lot of the heirs of Gabina Rallos; on the east by Calle Gardener; on the south by land of Juan de Vela and Cesaria Adel (purchasers); and on the west by the lot of Rita Jalbuena.

In witness whereof, and at the request of the interested party, I have issued these presents in Lucena, Tayabas, this 6th day of June, 1913.

(Sgd.) PEDRO M. NIEVA,
*Notary Public.*

My commission expires Dec. 31, 1914.

Stamp and seal.

49 *Deed of Sale.*

I, Nestorio Nosce, married, of age, born in the municipality of Tayabas, Tayabas, P. I., and a resident of Lucena, by these presents set forth and declare that in consideration of the sum of P1,000 (one thousand) pesos, Philippine currency, paid to me by Mr. Esteban Lagos and his wife Miguela Allarey, also residents of Lucena, I hereby sell and transfer to the said Esteban Lagos and Miguela Allarey, their heirs and assigns, a parcel of land situated at the corner of Calles Salvador and Gardener, in the center of this municipality; it is adjoined on the north and east by the said Calles Salvador and Gardener, respectively; on the south by the land of Honorio Lanusa; and on the west by that of the purchasers herein, Lagos and Allarey.

I also set forth and declare, that this sale is absolute and that I have covenanted and agreed with the aforementioned spouses Lagos and Allarey that they are the absolute owners of the said parcel of land, free of all charges and encumbrances, and that they are free to exercise the right of transferring it to others.

Finally, I also set forth that I am responsible to the herein purchasers, Esteban Lagos and Miguela Allarey, their heirs — assigns, for the property, the title to which I hereby undertake to defend now and always against any just claim by whomsoever presented.

In testimony whereof I sign these presents in Lucena, this 5th day of June, 1911.

(Sgd.) NESTORIO NOSCE.

Signed in the presence of
(Sgd.) ANDRES DINGLASAN.
JUVENCIO TRINIDAD.

50 *Ratification.*

Province of Tayabas, P. I.

In the municipality of Lucena, of the above mentioned province this 5th day of June, 1911, before me personally appeared Nesterio

Nosce, whom I certify to be the person who executed the foregoing document, who ratified it as being an act of his own free will; at the same time he exhibited his personal cedula No. F1,108,707, issued to him on the 28th of February, 1911.

Before me,

(Sgd.) PEDRO M. NIEVA,
*Notary Public.*

My commission expires December 31, 1914.

Seal and stamps.

I, Pedro M. Nieva, a duly commissioned notary public, hereby certify that the foregoing is a true copy of the original, which consists of two folios and is inscribed in my notarial register, as certified by me on the 28th of February, 1911, in Lucena, Tayabas, P. I.

(Sgd.) PEDRO M. NIEVA,
*Notary Public.*

My commission expires December 31, 1914.

Seal and stamp.

51 *Deed of Sale.*

I, Romana Velasquez, of age, a widow, residing in the municipality of Lucena, Province of Tayabas, Philippine Islands, in consideration of the sum of six thousand five hundred pesos (P6,500), Philippine currency, paid to me by Mr. Filemon Perez, married, of age, also residing here in Lucena, Province of Tayabas, P. I., hereby declare that, I have sold and transferred in absolute sale to the said Filemon Perez and his heirs, a parcel of land with the crops thereon, measuring 16.094 square meters, which will be traversed by the railroad (it will be expropriated by the Manila Railroad Co.). It is bounded on the north by the land of Romana Velasquez; on the east by that of Mr. Melecio Allarey; on the south by that of Señora Hilaria Enriquez and land of the vendor; and on the west by Calle Gardener; it is located at the south of the provincial government building and the provincial jail in this town of Lucena.

I also declare that I have agreed and covenanted with the said Mr. Filemon Perez that from this date, in consideration of the amount which he has paid me and which is set forth above, that he is the absolute and true possessor and owner of the said land, free of all charges and encumbrances, and that he may freely dispose of the same by sale or transfer.

I furthermore set forth that I will answer to the said Mr. Filemon Peretz, his heirs and assigns, for the property of the said land, the title to which I undertake to defend now and always against all just claims which may be presented against it.

52 In witness whereof I sign these presents in the municipality of Lucena, Tayabas, this 21st of July, 1912.
(Sgd.) ROMANA VELASQUEZ.

Signed in the presence of the witnesses
(Sgd.) HONORIO LANUZA.
" TIMOTEO NARANJO.

Personally appeared before me Doña Romana Velasquez, whom I certify to be personally known to me as the person who executed the foregoing document and who ratified the same as being an act of her own free will.

The interested party did not exhibit a cedula by reason of her sex.

Lucena, Tayabas, July 21, 1912.
Before me,
(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires on the 31st of December, 1912.

Register No. 308.
Page 100.
Seal and stamps.

308. Sale of a parcel of land; it measures 16,094 square meters; situated in the inhabited portion of the municipality of Lucena Tayabas, to the south of the provincial government building and provincial jail; with all of the improvements thereon to Don
53 Filemon Perez for the sum of P6,500. Ratification: Romana Velasquez, Timoteo Naranjo, Honorio Lanuza.—July 21, 1912. Exempt from having cedula.

I certify that the foregoing is a true and correct copy of an entry in my notarial register numbered 308, page 100. And on petition of Don Filemon Perez I issue these presents, to which I affix my signature and seal in Lucena, Tayabas, this 11th day of June, 1913.
(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires the 31st of December, 1914.

Seal and stamp.

54 I, the undersigned, Romana Velesquez, widow of Enriquez, of age, a resident of this town of Lucena, Province of Tayabas, P. I., by these presents set forth and declare that in consideration of the sum of two thousand five hundred pesos (P2,500) conant, to me in hand paid by the spouses Mr. Simeon Perez and Mrs. Victoria Enriquez de Perez, also residents of this town of

Lucena, Tayabas, P. I., I have sold and transferred to them, their heirs and assigns three parcels of unirrigated land belonging to me, situated in this town of Lucena, Tayabas, P. I., the description of which is as follows:

First parcel.—A parcel of unirrigated land measuring 792 feet, English measurement, on the north; 776 feet, English measurement, on the south; 317 feet, English measurement, on the east; and 278 feet, English measurement, on the west; bounded on the north by the land on which is erected the provincial government building of this province; on the south by land belonging to the rail oad company; on the east by land bought by me from Mrs. Odonia, widow of Enriquez; and on the west by the main road of this town of Lucena leading to Cotta.

Second parcel.—A parcel of land, also unirrigated, which measures 30 meters from north to south, 43 meters from east to west, and is bounded on the north by land belonging to the railroad company; on the south by some more unirrigated land belonging to me; on the east by a creek and on the other side of the creek the portion of my land which remains on that side, which is the third portion of this sale, and by unirrigated land belonging to Mrs. Hilaria Enriquez; and on the west by the main road of this town of Lucena leading to Cotta.

55 Third parcel.—A parcel of land, also unirrigated, which measures three gantas of rice seed, full measure, more or less; it is bounded on the north by land belonging to the railroad company; on the south by unirrigated land belonging to Mrs. Hilaria Enriquez; on the east by unirrigated land of Mr. Melecio Allarey; and on the west by the above mentioned creek and the land I have also sold and mentioned as the second parcel of this instrument.

I also set forth and declare that it has been covenanted and agreed that the said spouses Simeon Perez and Victoria Enriquez de Perez, their heirs and assigns, are the true owners of the parcels of land above set forth andthat they may sell or transfer the same to any person whatsoever.

I also set forth and declare that I will answer to the aforesaid spouses, Mr. Filemon Perez and Victoria Enriquez de Perez, their true heirs and assigns, for the true ownership of the said lands, and I undertake to defend the title thereto against any claim against them presented by any person whatsoever.

In witness of all of which I affix my signature hereto in the presence of witnesses in Lucena, Tayabas, P. I., this 9th day of November, 1912.

(Sgd.) ROMANA VELASQUEZ.

In the presence of

(Sgd.) HONORIO LANUZA.
" LEANDRO DE VERA.

56 UNITED STATES OF AMERICA,
*Philippine Islands:*

Lucena, Tayabas, P. I.

Before me, Crispo Ella, notary public of the Province of Tayabas, appeared Doña Romana Velasquez whom I certify as being the person who executed the foregoing instrument, and who ratified this as being an act of her own free will and deed.

Doña Romana Velasquez, being a woman, did not exhibit a cedula.

Lucena, November 18, 1912.

Registered No. 444.

Page 30.

(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires December 31, 1912.

Seal and stamps.

444. Sale of three parcels of unirrigated land situated in this municipality of Lucena, Tayabas, P. I., the descriptions of which are as follows:—1st.—measures 792 feet, English measurement, on the north; 776 id. id. on the south; 317 id. id. on the east; and 278 id. id. on the west. Bounded on the north by the land on which the provincial government building is situated; on the south by that of the railroad; on the east by that of the vendor; and on the west by the main road to Cotta. 2d; measures from north to south 30 meters, from the east to west 43 meters. Bounded on the north by land of the railroad company; on the south by land of the vendor; on the east by a ditch; and on the west by the main road leading to Cotta. The 3d parcel measures three gantas of
57 rice seed, double measure, and is bounded on the north by the railroad company's land; on the south by that of Hilaria Enriquez; on the east by that of Melecio Allarey, and on the west by the said ditch and the land sold and described as the second parcel. For the sum of P2,500. Executed on the 9th of November, 1912. Ratification, Romana Velasquez, widow of Enriquez, vendor. Simeon Perez and Victoria Enriquez, purchasers. Honorio Lanuza, Leandro de Vera, November 18, 1912. P0.50. Did not exhibit a cedula by reason of her sex. Page 30.

I certify that the foregoing is a true and correct copy of an inscription taken from my notarial register registered under the number 444, p. 30.

And on petition of Mr. Simeon Perez, I issue these presents, to which I affix my signature and seal in Lucena, Tayabas, this 11th day of June, 1913.

(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires December 31, 1914.

Seal and stamp.

58 *Special Proceeding.*

By the Commission of Appraisement of the Lands Sought to Be Expropriated by the Manila Railroad Company.

Lucena, June 7, 1913.

In the municipality of Lucena, Province of Tayabas, Philippine Islands, in the session room of the Court of First Instance, this 7th day of June, 1913, there appeared the commission of avaluation, composed of Messrs. Federico Unson, the Reverend Father Pablo Pajarillo and Honorio Lanuza; there were also present at the time, Attorneys Roman Lacson, representing the plaintiff company, the Manila Railroad Co., and Mr. Carlos Ledesma, representing Mr. Filemon Perez and other defendants in the proceedings for the forcible expropriation of lands in the municipality of Lucena.

Mr. Luciano L. Santos proceeded to take the oath in order to act as stenographer in these special proceedings.

Counsel for the plaintiff announced that he intended to present certified copies of the tax assessment certificates.

Mr. Ledesma was asked if he agreed; he answered in the affirmative, adding that that was not the best proof of the re-l value of the properties.

Mr. Lacson announced that he would introduce evidence in rebuttal.

*Testimony of Mr. Simeon Perez.*

Witness is called to the stand and is duly sworn; he is 56 years of age, married, a native of Ibaan, Batangas, and resides in Lucena. The following question- were put to him:

59 Counsel for Defendant: Are you one of the defendants in this suit?

Answer. Yes, sir.

Q. I show you here what appears to be a plan of some lands situated at the railroad station in Lucena, a plan which is attached to the complaint. Please show us the lands which belong to you.

A. To the north, from here to here; on the south, from here to here. (Witness refers to parcels 21-*a* and 21-*b*, with the exception of a part of parcel 21-*b* which is that embraced within the land that runs from the little river as far as the property of Deogracias Maligalig.)

Q. Did you make any improvements on either of these parcels 21-*a* and 21-*b*?

A. Yes, sir; in the northern part of parcel 21-*b*.

Q. What have you got there?

A. A camarin (storehouse) in course of construction.

Q. When did you commence to build this storehouse?

A. About the middle of last December.

Q. And is the work or construction on the storehouse finished?
A. No, sir.
Q. Why not?
A. Because the work was suspended by order of the court.
Q. What object did you have in building this storehouse?
A. To rent it to my neighbors for the storage of merchandise and to rent some of the doorways as tiendas (stores).
Q. How much had you spent on the building up to the time you received the order of the court to suspend the work?
60 A. I think I have spent more than P400.00 for carpenters.
Q. If you had to undo the work already performed and move the building to some other site, how much would it cost you?
A. The builder who put up the camarin asks me the same price—P400.00.
Q. Are you damaged by the delay in the work?
A. Yes, sir; very much.
Q. What do you figure or believe that you are losing per diem?
A. According to the neighbors who have contracted with me for each doorway; some of them contracted with me for two and others for three, and for the seven doorways that I have already contracted for, I ought to receive P12.00 per diem for the camarin.
Q. Have you any other properties contiguous to this one?
A. Yes, sir; I own the land alongside of parcel 21-*b*.
Q. Alongside of parcel 21-*b*, do you own any parcel of land?
A. Yes, sir; I have a little there, a few meters wide. Commencing from the road leading to Cotta, something like seven (7) meters and on the east it measures about three meters. (Witness shows that alongside parcel 21-*b* he has a parcel of land that measures on the side fronting the road leading to Cotta seven meters, and at the end of the strip adjoining parcel 22-*a* a piece of land three meters wide.)
Q. How long is the strip?
A. What results from this measurement; I have not measured it, but it must be the same measurement. I figure it to be about 230 meters long, more or less, the parcel remaining from parcel 21-*a*.
61 Q. Do you mean to say then, that the parcel 21-*a*, together with the parcel which, you say is contiguous with 21-*a*, used to be one tract that is now divided by the expropriation?
A. Yes, sir.
Q. And the parcel which remains is about 230 meters long, more or less, with a width of 7 meters in front of the street leading to Cotta and three meters on the side alongside the estero?
A. Yes, sir.
Q. What is the true value of parcels 21-*a* and 21-*b*.
A. The actual value of these lands is not more than P5.00 per square meter.
Q. Do you possess other properties in this town or in this province?
A. Yes, sir.

Cross-examination.

By Counsel for the Plaintiff:

Q. How did you acquire these strips of land, parcels 21-*a* and 21-*b*?

A. I bought them.

Q. From whom?

A. From Doña Romana Velasquez.

Q. How much did these strips of land cost you?

A. If I remember correctly, P2,500.00. I am not quite sure, but I have the documents.

Q. Could you show a copy to the commission?

A. Yes, sir.

Q. You state that you are suffering damages to the amount of P12.00 per diem; in what manner?

62 A. For the delay in not continuing the work on the camarin; if the work had continued to a finish on the camarin I would have received that amount in rentals.

Q. You have not really suffered any damages?

A. The damage caused me in not continuing——

Q. But you have not entered into any contracts?

A. Some of the neighbors contracted with me, one of them for two doors and another for three.

Q. That was in case that the camarin should be finished?

A. Yes, sir; for when it was finished.

Q. What width is the land where the camarin is situated?

A. Five meters wide and 230 meters long, more or less.

Q. Could you remove your camarin from the place where it now is and set it up in another spot on your own land?

A. Yes, sir.

Q. That has gone up in value on account of the coming of the railroad station there?

A. Yes, sir; and on account of the construction of the government building, and still more since the installation of the railroad.

Q. But although the government were located here, without the railroad station the house that you would build for the purpose of renting would not be occupied because there would be no people to live in it?

A. Yes, sir. It would be occupied; only by the employees of the government.

Q. And for tiendas (little stores)?

A. No, sir; for living purposes.

63 Q. Has the portion that remains alongside from parcels 21-*a* and 21-*b* increased in value because tiendas may be built upon them?

A. Yes, sir.

Q. You say that, on the parcel contiguous to parcel 21-*a* there remains to you a strip of 7 meters on the front, 3 meters at the back, and 230 long; could you also build tiendas on that strip?

A. Yes, sir; on this end, yes; but not at the other because it is only three meters wide.

Q. What were these lands used for before the arrival of the railroad in these parts?

A. For building lots.

Q. That is all.

Defendant: Is Doña Romana Velasquez, from whom you bought parcels 21-*a* and 21-*b*, related to you by blood or marriage in any way?

A. Yes, sir.

Def.: In what way?

A. She is my mother-in-law.

H. Lanuza: What is this parcel 21-*b* bounded by on the north?

A. By the government land.

H. Lanuza: Was the work on this camarin you speak of stopped at your own pleasure?

A. No, sir; the work was stopped on account of an order of the court restraining me, because the land was to be occupied by the railroad company.

64 Fed. Unson: Can the lumber be used again?

A. Part of it can be used, but not the greater portion, on account of the deterioration it has suffered by exposure to the weather.

Fed. Unson: How much can be used and how much cannot?

A. A third part of the materials are now useless; they are eaten by white ants and are rotten.

Fed. Unson: How much do you think this third part would be worth?

A. If I bought those materials to-day I doubt if I could get them for P250.00.

Pablo Pajarillo: You say that you have spent P400.00 for labor on the storehouse; were the materials included in that sum?

A. Yes, sir.

P. Pajarillo: Did you say that the third part would cost you about P250.00?

A. Yes, sir; I have seen that the materials are rotting. The judge asked me how much I had spent and I told him P400.00; now all the materials put into that camarin, according to the actual value at present, they have been exposed for so many months to the weather that a third part of the lumber has become useless.

P. Pajarillo: Do you mean to say that the work is also included?

A. Yes, sir; it is to acquire other materials, if I had to complete the work now.

Defendant: Did you spend the P400.00 which you say you spent on the work of building the camarin, for labor or for materials?

65 A. For labor.

Defendant: The materials are not included therein?

A. No, sir; only the labor.

Defendant: And how much did you pay for the lumber used?

A. I could not say without first making a calculation of the number of uprights, joists, etc.—without the list.

Plaintiff: When did you receive the order to suspend the work on the camarin?

A. I don't remember, but here is the order of the court and I suspended the work from that date.

Le.: On receipt of this order, could you not have immediately built the camarin on the strip adjoining this parcel?

A. I did not want to remove the camarin because I was not advised of the extent of land that was to be expropriated.

Le.: Was not the order of the court issued after the filing of the complaint?

A. If I remember correctly the notification which was given me including the complaint.

Plaintiff: So that at the same time the complaint was filed you received the official notice?

A. A long time after the complaint. The notice of suspension that I received from the court came long after I was notified of the complaint.

Fed. Unson: Do you mean to say that the suspension came first?

A. Yes, sir.

Plaintiff: Who suspended you?

A. The clerk of the court notified me.

Plaintiff: But after you were notified of the suspension and
66 the complaint, could you not have built the camarin in another spot?

A. No, sir; I did not want to.

Plaintiff: But you might have done so?

A. I did not want to remove it.

Plaintiff: If you had removed the lumber from there you would not have suffered any damage; the materials would not have deteriorated?

A. I believe so.

*Testimony of Deogracias Maligalig.*

Witness was called to the stand and duly sworn; he is 48 years of age; married, native of Tayabas and residing in Lucena; he testified as follows:

Defendant: Are you one of the defendants in these proceedings?

A. Yes, sir.

Def.: Have you any property in the neighborhood of the railroad station at Lucena?

A. Yes, sir.

Def.: Look at this plan and please tell us which of these parcels are yours.

(Witness indicates parcels 23-*a*, 23-*b*, 23-*c* and 23-*d* on the plan.)

Def.: In addition to these four parcels have you any other contiguous to any of them?

A. Yes, sir.

Def.: Where is it?

67 A. On the north and south—There are parcels contiguous to parcels 23-*c* and 23-*d*.

Def.: Is this parcel adjoining parcel 23-*c* a part of the same parcel 23-*c*?

A. Yes, sir; it is a parcel that was divided by the expropriation.

Def.: What part of this parcel was not appropriated?

A. The narrowest part will measure perhaps a meter, and on the east, or the widest part, about ten meters; the whole parcel is about 30 meters long.

Def.: Have you suffered any damages and losses on account of the expropriation of parcel 23-*c* and the division of the same?

A. Yes, sir; in the north because no houses can now be built there as it is merely a strip of land.

Def.: What is the actual market value of these four parcels of land which the railroad company seeks to expropriate?

A. P5.00 per square meter.

Plaintiff: Do you know how much those lands of yours are assessed at?

A. I pay P27.00 as taxes.

Plain.: That is to say that all of your land there in that place is assessed at P2,700.00?

(No answer.)

Plain.: How much land have you there?

A. I do not remember.

Plain.: What were the lands used for before the railroad came there?

A. For growing rice and coconuts.

68 Plain.: How many cavanes of rice seed did you plant there?

A. Six double cavanes, or six hectares. In Tayabas a double cavan equals a hectare.

Plain.: So that before the railroad came you used the land for paddy?

A. Yes, sir.

Plain.: How did you come by the land?

A. I inherited it from my uncle.

Plain.: What is the value of rice lands here in Lucena?

A. P500.00 per cavan.

Plain.: That is all.

Fed. Unson: There are no coconuts on your land that is to be condemned?

A. There are no coconuts on the part sought to be expropriated; there are coconuts on the southern part.

*Testimony of Primitivo S. Agustin.*

Witness was called to the stand and exhibited his personal cedula No. F. 1,230,347, issued in Lucena on the 15th of April, 1913; 33 years of age; native of Tayabas and resident of Lucena; attorney by

profession; after being duly sworn the following questions were put to him:

Def.: Have you any real property in the municipality of Lucena?

A. Yes, sir.

Def.: Do you know the value of real estate in the municipality of Lucena?

69 A. Yes, sir.

Def.: Do you particularly know the values of real property in the vicinity of the provincial government building and the Lucena station?

A. Yes, sir; all the more because my house is situated near by, between the government building and the station.

Def.: And what do you think land is worth at the railroad station in Lucena and close to the land belonging to the provincial government of Tayabas?

A. Comparing it with my own land, from P5.00 to P8.00 per square meter.

Def.: Upon what do you base your opinion?

A. Because the lot on which I built my house and which I acquired in 1910, cost me nearly P2.00 per square meter; and in view of its importance now, owing to the coming of the government and the railroad * * * if I was offered P8.00 I would not sell part of my land.

Def.: If you were about to buy some land at auction, near to the railroad station and to the Tayabas provincial government building, what would be the highest price you would offer?

A. I might offer up to P8.00.

Def.: And the lowest?

A. P5.00.

Plain.: Do you know how much the government paid for the land on which the government building stands?

A. I have no idea.

70 Plain.: When you bought this land in 1910, were you a candidate or were you the provincial governor?

A. I was then the provincial governor.

Plain.: Do you know of any land in all of the Province of Tayabas that might have cost P5.00 to P8.00 per square meter?

A. I believe so; according to current rumor in the town a Chinaman has just bought some land in the center of the population which cost him P4.00 or more per square meter; so that in all of the province there is some.

Plain.: Was this in the commercial district of the town of Lucena?

A. Yes, sir; it was within the center of population.

Plain.: Are you acquainted with the prices of rice or agricultural land here in the Province of Tayabas?

A. It varies in price according to the municipality.

Plain.: What is it in Lucena?

A. It differs; it depends upon whether it has its own water or whether it has none. Sometimes it is worth P400.00 to P500.00 per hectare and if it is irrigated land, more than P1,000.00.

Plain.: Is that the price of the land alongside the railroad station?

A. No, sir; when I bought my land it was not even proposed to put the station there. The old project was to put it near the cemetery, and when I bought my property it was already that price.

Plain.: From whom did you buy the land?

71 A. From Filemon Veluz; and I wish to add that I did not make use of the influence of my position then, although he is my compadre; if I had, it would have cost me less.

Plain.: How many square meters did you buy from Filemon Veluz?

A. My lot measures 46 by 42 meters.

Plain.: That is all.

*Testimony of Eulalio Garcia.*

The witness above-named was called to the stand and duly sworn; the number of his personal cedula is F., 1,228,549, issued on the 14th of January, 1913; he is a native of Taal, 27 years of age, residing in Lucena; attorney-at-law by profession. The following questions were put to him:

Plaintiff: Do you own any real estate in the municipality of Lucena?

A. I own a lot in front of the provincial government building.

Defendant: Near the railroad station?

A. Yes, sir.

Def.: Do you know the values of real estate in the municipality of Lucena, and particularly of that close to the railroad station?

A. Yes, sir.

Def.: What is the actual market value of the land in the immediate vicinity of the railroad and the provincial government building?

A. The actual market value is P7.00 per square meter, more or less.

72 Def.: Upon what do you base your opinion?

A. Upon my knowledge that a person was able to sell some at P10.00 per square meter; that person is Andres Dinlasan; he had a small lot and sold it at that price.

Def.: How much do you think might be offered for a parcel of land in the immediate vicinity of the railroad and the provincial government building in Lucena?

A. I would offer P6.00 per square meter.

Def.: You offer that price on account of its proximity to the railroad station?

A. Not only on that account but on account of the value of the land, and in other parts here, that is the current price. The land which I own measures 24 by 42 meters and was a sale between brothers four years ago; it cost me P500.00. That cannot be taken as the value of my lot.

*Testimony of Andres Dinlasan.*

He exhibited cedula No. F., 1,248,500, issued in Lucena on the 29th of April, 1913; he is 37 years of age, clerk, a native and resident of Lucena; he swore to tell the truth and the whole truth; he was questioned and testified as follows:

Def.: Are you the owner of any land in the municipality of Lucena?

A. Yes, sir.

Def.: Have you recently made any purchase or sale of land in the municipality of Lucena?

A. Yes, sir.

73 Def.: How much, and what class of land did you buy or sell?

A. I sold a lot in the center of the town.

Def.: How large is this lot?

A. 119 meters 70 centimeters square.

Def.: At what price did you sell it?

A. I sold it at more than P10.00 per square meter.

Def.: What was the price of the sale?

A. P1220.00.

Def.: To whom did you sell it?

A. To the spouses Juan Develа and Cesarea Adel.

On cross-examination.

By the Plaintiff:

Plain.: Have you a copy of the deed of sale here?

A. Yes, sir.

Plain.: Were you paid in cash?

A. Yes, sir.

Plain.: Do you know why they paid that amount?

A. I do not. I only know that they bought it from me.

Plain.: Do they own any land alongside the piece you sold to them?

A. Yes, sir.

Plain.: Was there a building on the piece you sold them?

A. No, sir; it is the place where the fire was.

Plain.: Was this land that you sold in the center of the town where the stores are?

A. I cannot say whether it is in the center but it is not in the section where there is much traffic.

Plain.: That is all.

74 *Testimony of Esteban Lagos.*

The above-named witness took the stand. He did not exhibit his personal cedula because he had left it at the house. Age, 37; married; by profession a pharmacist; native of Tayabas and a resident

of Lucena; he swore to tell the truth and was submitted to the following interrogatory:

Defendant: Do you own any real or urban property in the municipality of Lucena?

A. Yes, sir.

Def.: Whereabouts?

A. Alongside the house of Mr. Perez.

Def.: How far is it from the provincial government building?

A. About 250 meters from the provincial building and about 50 meters from the government land.

Def.: When did you acquire this property?

A. In 1910.

Def.: What is the extent of your land?

A. I have two lots; one with a house on it and the other without.

Def.: When did you acquire the lot that has no building on it?

A. In 1911.

Def.: How large is it?

A. It is about 16 by 18 meters; something like that.

Def.: How much did you pay for it?

A. P1,000.00, as appears in that document.

Def.: What is your opinion as to the actual value of that land?

A. I think it might be worth more than P1,000.00.

Def.: Do you know the railroad station in Lucena?

75 A. Yes, sir.

Def.: How much would you offer at public auction for land situated in the immediate vicinity of the Lucena railroad station and the provincial government building?

A. I might pay P5.00.

Def.: That is all.

On cross-examination.

By Counsel for the Plaintiff Company:

Plain.: Have you any interest in acquiring any land near the railroad station at Lucena?

A. I have none at the present time.

Plain.: Then how is it that you would offer that price?

A. Because I know that it is a valuable locality at the present time.

Plain.: Is the land that you bought high land?

A. It is not so very high.

Plain.: Do you know the land where the railroad station at Lucena is actually situated?

A. I am not familiar with things here.

Plain.: Are you not a native of these parts?

A. Yes, sir; but I have a business which does not permit me to know these things.

Plain.: Do you not go to Cotta?

A. Yes, sir.

Plain.: What was formerly there?

A. Trees and bamboo.
Plain.: Is it rice land?
A. No, sir.
76 Plain.: What did you plant there; coconuts?
A. No, sir.
Plain.: What was there, then?
A. Guava trees and cane brakes.
Plain.: That is what was there before the railroad came, is it?
A. Yes, sir.

*Testimony of Ambrosio Zaballero.*

The above-named witness took the stand and was duly sworn; he is exempt from having a cedula on account of age; age, 66 years; a native and resident of Lucena. He testified as follows:

Def.: Are you the owner of any land in the municipality of Lucena?
A. Yes, sir.
Def.: How much, more or less?
A. I could not say exactly; in the jurisdiction of Lucena, about 30 parcels.
Def.: And how much would those parcels contain, more or less?
A. I could not say exactly.
Def.: How long have you been a landowner in the municipality of Lucena?
A. About 40 years.
Def.: And from that time up to the present have you been continually buying and selling lands?
A. Buying only.
Def.: Do you know the actual value of real property here in Lucena?
A. Yes, sir.
77 Def.: Do you know the railroad station and the land belonging to the provincial government of Tayabas?
A. Yes, sir.
Q. What is the actual value of land situated between the provincial government of Lucena and the vicinity of the railroad?
A. I think about P5.00.
Def.: That is what you would offer at public sale for a piece of land at that place?
A. Yes, sir.

On cross-examination.

By Counsel for the Plaintiff Company:

Plain.: Do you know (what was on) the land where the railroad station at Lucena now is, before the railroad came?
A. It was nothing but a paddy field.
Plain.: What was the land worth then?
A. I should say about P300.00 the double cavan; that is the current price in the province.
Plain.: That is all.

The parties agreed to leave to the commissioners the task of finding out the dates on which the railroad company took possession of parcels 21, 22 and 23 on the plan, they to include it in the report, as well as the dates of the occupation of the remaining additional parcels which it is sought to expropriate.

78 *Testimony of Melecio Allarey.*

Witness is 68 years of age; native and resident of Lucena; married, after being duly sworn, he testified as follows:

Def.: Are you one of the defendants in these proceedings?

A. Yes, sir; I am one of the persons whose lands are expropriated.

Def.: Have you any parcels occupied by the railroad station at Lucena?

A. Yes, sir.

Def.: How many?

A. One sole parcel. (The witness refers to parcels 22-*a*, 22-*b*, 22-*c*, 22-*d* and 22-*e*.)

Def.: What is the actual value of your parcels per square meter?

A. P5.50 per square meter.

Def.: Have you any other real estate in Lucena in addition to that which the railroad company is expropriating?

A. I have something like three double cavanes of seed left.

Def.: If you were to buy at auction land in the vicinity of the railroad station, near to your own parcels, how much would you offer per square meter?

A. I could not say exactly, because not having anything to buy with I could not buy.

Def.: Supposing that you had the money?

A. If I had the money I would offer P5.50.

Def.: You say that the land which you own there is three double cavanes of seed, or a total of 30,000 square meters?

A. I cannot say how much it is in square meters.

(A double cavan of seed equals about a hectare.)

79 Plain.: What is the value of the remaining land measuring three cavanes of seed that you own?

A. If I were selling those three cavanes to other purchasers, I would sell them by the square meter at the price I told you.

Plain.: So that if you were about to make a will you would price the land at more than P5.50?

A. I could not say that; whatever it turned out to be is what I would divide among my children.

Plain.: But do you consider yourself to be the owner of these lands at the rate of P5.50, or not?

A. It would depend on the sale; if I were pressed for money I would sell them at P5.50.

Plain.: Do you consider yourself to be the owner of its actual value, or are you the owner of more than P150,000.00?
A. In disposing of the land I figure on the latter price.
Plain.: Would you declare that value for taxes?
A. I think not; when it comes to tax assessment, we have assessors.
Plain.: But in the sworn declaration you give a price as what you believe the land to be worth.
A. We agree to what the assessors say.
Plain.: How much do (did?) you actually pay for those lands?
A. I am not very sure; but I think I paid between P12 and P13.
Plain.: How did you acquire this land?
A. I got it from the late Don Santiago Lopez, about 50 years ago.
Plain.: What was this land used for, before the railroad came?
A. For growing rice.
80 Plain.: Is the remaining three cavanes of land still being used for rice?
A. When we have seed we can plant it.
Plain.: Do you use it for growing rice?
A. No, sir; because we have no carabaos or work animals.
Plain.: But if you had any carabaos you would use it for rice?
A. If my sons plowed it.
Plain.: That is all.

*Testimony of Anastasio Edrad.*

On being called to the stand the above-named witness declared that he was 28 years of age; married; a native and resident of Lucena; a lumberman by occupation. He was duly sworn and testified as follows:

Def.: Have you any land in the municipality of Lucena?
A. Yes, sir.
Def.: In what part?
A. In the town itself.
Def.: When did you acquire it?
A. In 1911.
Def.: What did you pay for it?
A. P1,400.00.
Def.: How large is it?
A. "O (sic) by 11 meters.
Def.: Do you know the railroad station at Lucena?
A. Yes, sir.
81 Def.: What do you think is the value of the lands in the vicinity of the railroad station?
A. I should say about P5 or P6 *pesos*.
Def.: Why do you say that?
A. On account of the actual price of land and on account of the actual necessities of commerce I can venture to say that.
Def.: That is all.

Cross-examination.

By the Plaintiff:

Plain.: Do you know what class of lands were those where the railroad station now is?

A. Yes, sir.

Plain.: What class of land?

A. Before the coming of the railroad I think they might be classed as No. 1 in view of the fact that they were near the center of the town and could be used for either building purposes or for agriculture.

Plain.: Before the railroad came, what were the lands used for?

A. For growing rice and coconuts.

Plain.: Were they sown to rice and coconuts up to the time they were expropriated by the railroad?

A. When I noticed them the plants were withered; there was nothing planted.

Plain.: But they served for that purpose?

A. Yes, sir.

Plain.: Do you know the value of lands here in Lucena?

A. Yes, sir.

82 Plain.: What is land of a double cavan of rice seed worth, more or less?

A. According to the actual values hereabouts, it amounts to P50,000.00.

Plain.: Did you ever in your life hear of rice-land worth P50,000 per hectare?

A. For land at some distance from the inhabited portion of Lucena, a double cavan would cost from P300 to P400 for agricultural purposes; but lands within the jurisdiction of Lucena have risen considerably; besides, here, a building lot costs P1,000 and measures 20 by 20 meters, at a distance from the government headquarters at that.

Plain.: That is all.

It was agreed by the parties that the defendants Simeon Perez, Filemon Perez and Romana Velasquez should present the deeds referring to parcel 21 of the plan since the time of its acquisition by Romana Velasquez from its original owner; and the plaintiff agrees from now that the parties to said instruments, Pilar Enriquez, Silvestre Ubaldo and Filemon Perez, are direct grandchildren of Doña Romana Velasquez.

*Testimony of Cayo Alzona.*

After being duly sworn, witness stated that he was 45 years of age; married, resident of Lucena; attorney and provincial fiscal for Tayabas.

83 Plaintiff: Have you any land near the provincial building at Lucena?

A. Yes, sir.

Plain.: Of how many parcels is it composed?

A. At the present time I have only one parcel, that is the one on which my house is situated; but I bought this parcel on two occasions, at different times.

Plain.: How much did each one of the parcels cost you?

A. The part on the street, which measures approximately 22 ares, cost me P350 in the year 1906 or 1907, I do not remember exactly; the part toward the west, which is a little less than a hectare, cost me P1,500. I think it was in the month of December last, 1912.

Plain.: How far from the railroad station is the land last bought by you?

A. I figure that it is about 200 (?), approximately.

Plain.: Up to about what price are rice-lands sold for, here in Lucena of the Province of Tayabas? What would a hectare of first class rice-land be worth, more or less?

A. As to Lucena I cannot say, but in Candelaria, it depends upon the condition of the land. If it is a paddy field ready to be plowed and planted, it will be worth up to P200 or P250 per hectare. I bought a piece of uncleaned paddy that cost me P150 per hectare.

Plain.: Do you know the price of lands here in Lucena?

A. The price is somewhat higher here in Lucena than in Candelaria.

Plain.: What is the ordinary price of rice-land here?

A. I have had no occasion to purchase rice-land. In the
84 case of coconut lands it is not customary to calculate the price per hectare, but by trees; in this part of Cotta a coconut tree is cheap if you can buy it for P10.

Plain.: But the land?

A. One does not buy the land except by the tree.

Plain.: But approximately, what is coconut land worth?

A. I think it might be worth P100 per hectare.

Plain.: Do you know the approximate value of lots alongside the government?

A. At the present time they are pretty dear. For lots measuring 20 by 20 meters some persons ask P500 to P700.

Plain.: Those are the ones that are on the street?

A. Yes, sir.

Cross-examination.

By Counsel for the Defendant:

Def.: Since you acquired those lots near the provincial government building, have they increased in value?

A. Yes, sir.

Def.: For what reason?

A. Firstly, on account of the construction of the provincial building and the high school and lastly on account of the railroad station.

Def.: Was not the government here when you bought your land?

A. No, sir; that is to say, with regard to the part on the street,

it was not known whether the government was going to be built at that place; but as to the latter part the railroad station was already here; it was in course of construction, but was only opened at the end of January.

85 Def.: From whom did you buy those lots?

A. The one on the street I purchased from an American who had to go to America.

Def.: And the part at the back?

A. From a resident here named Julian Jabierto.

Def.: A friend of yours?

A. Merely an acquaintance.

Def.: What is the actual value of these lands?

A. The value of the lands has increased, especially the one on the street.

Def.: That is to say, if it is expropriated from you?

A. As it is a piece of land that I am especially attached to, any amount would *be* seem small.

Def.: Suppose that the land belonged to another person and that you wanted to buy it at public auction, how high would you bid per square meter?

A. If I were a merchant, perhaps I would be inclined to pay as much as P3 or P4 per square meter; but as I am not, I would not venture to pay that price.

Def.: Did you make any further purchases after buying those lots here in Lucena?

A. Here in Lucena, no, sir.

Def.: Did you have to fill in the back part of your lot?

A. No, sir; I have not filled it in up to the present.

All the documents presented by the witnesses Andres Dinlasan, Esteban Lagos et al., were admitted as genuine by both

86 parties, as were also the documents presented by Simeon Perez, Filemon Perez and Doña Romana Velasquez.

I certify that the foregoing is a true and correct copy of the stenographic notes taken by me at the trial.

Lucena, June 9, 1913.

(Sgd.) LUCIANO L. SANTOS,
*Stenographer.*

87 That on July 18, 1913, plaintiffs filed the following memorandum.

Heading and Title.

*Memorandum of the Plaintiffs.*

The defendants claim that the report of the commissioners of appraisement ought to be disapproved on the grounds that its findings are not in accord with the evidence adduced before it and asks that the value of parcels 21-*a* and 21-*b* be fixed at P6.00 per square meter and that of the rest at P5.00.

The defendants base their claim on the testimony of Messrs. Primitivo San Agustin, Eulalio Garcia, Esteban Lagos, Ambrosio Caballero, Anastacio Edrad and Andres Dimlasan, but although it is true that these gentlemen have testified that they would buy the lands in question for P5.00 per square meter, the testimony of those gentlemen can not be credited because it is transparently partial and because it is not based on facts. It is an indisputable fact that before the railroad company took possession of them, the lands in question were agricultural lands, partly used for the cultivation of rice and and partly for the growing of coconuts. It is likewise undeniable that there is no agricultural land destined for those purposes which is worth more than P500 per hectare, or more than five centavos (P0.05) per square meter.

In the sworn declarations presented for the purposes of land tax assessment the value of the lands is set out and in them it is clearly seen that the value of the lands to be expropriated is not anywhere near the amount claimed by the witnesses in this case.

The respective sworn declarations of the owners should estop the affiant, because in those matters the oath is as binding as in
88 any other and if the affiants do not declare the truth they ought to be prosecuted for perjury.

It should also be noted that all of the witnesses, including those of the defendants, testified that the value of the lands in question has risen on account of the advent of the railroad. This being the case and even accepting the testimony of the defendants as true, the rise in price of the land is due to the building of the railroad across the lands being expropriated and consequently this rise in value is a benefit which the railroad company is conferring on the owners of the adjoining lands and this benefit should be deduced from the damages suffered by the defendants.

With respect to the testimony of Don Cayo Alzona, a disinterested witness very worthy of credit, the defendants have arrived at a wrong conclusion with regard to that part of his testimony wherein he says:

"Def.: Suppose that the land belonged to another person and that you wanted to buy it at public auction, how high would you bid per square meter?

"A. If I were a merchant, perhaps I would be inclined to pay as much as P3 or P4 per square meter; but as I am not, I would not venture to pay that price."

As is seen, Mr. Cayo Alzona says that if he were a merchant, perhaps he would be disposed to pay up to P3 or P4 per square meter, but that as he is not a merchant he would not venture to pay that amount. The testimony therefore of Mr. Cayo Alzona with regard whether or not he would pay P3 or P4 per square meter has not the importance that defendant claims for it because as he himself says, he is not a merchant. Besides, if we examine the deeds of transfer of some of the parcels *on* question, made since the road has been built we will see that the sale prices are much less than those claimed by the defendants.

89 From the foregoing we see that the commissioners of appraisal have not only not taken into account everything favorable to the defendants, but that they have taken as a basis the declaration of Mr. Cayo Alzona in the sense that the latter said that the said lands were worth P3 or P4, whereas the said gentleman did not have the slightest intention of saying so and consequently the commissioners have taken as a basis of their calculations a greater value than the lands really possess.

Nevertheless, the plaintiff, in consideration of the fact that if the report of the commissioners be rejected it will result in damages to both the plaintiff and the defendants, prays the court to approve the said report.

Respectfully submitted,

(Sgd.) KINCAID & HARTIGAN,
(By E. A. PERKINS,)
*Attorneys for the Plaintiff.*

Manila, P. I., July 18, 1913.

(Sgd.) MARIANO LIM,
*Attorney for the Plaintiff.*

That on August 11, 1913, the plaintiffs filed an amendment to the foregoing memorandum, as follows:

Heading and Title.

*Amendment to the Memorandum of the Plaintiff.*

Comes now the plaintiff and amends his writing entitled "Memorandum of the Plaintiff," dated the 18th of July, 1913, and substitutes in place of the paragraph containing his prayer at
90 page 4 of the same, the following paragraph:

"That for the reasons set forth in the three foregoing pages (of the said memorandum of the plaintiff) the report of the commissioners of appraisement should be disapproved, because the said commissioners have valued the lands at an excessively high figure."

Wherefore we pray the court to disapprove the report of the said commissioners.

Manila, for Lucena, this 11th day of August, 1913.

(Sgd.) KINCAID & HARTIGAN,
(By W. H. KINCAID,)
*Attorneys for the Plaintiff.*

Received copy this 11th day of August, 1913.

(Sgd.) SINGSON, LEDESMA & LIM,
(By LIBERATO BATOON,)
*Attorneys for the Defendants.*

91 Director General de Administración Civil de Filipinas and by Delegation the Chief of the Province of Tayabas.

Whereas, Don Faustino Enriquez, a native Filipino and resident of Lucena, has applied for composition with the State with regard

to some Crown land which he possesses within the jurisdiction of the pueblo of Lucena, of this province, within the following metes and bounds:

Parcel No. 1.—Situated in the sitio of Cota, measures thirty-eight hectares, eighty-eight ares and forty-nine centares; bounded on the north by lands of Don Marcelino Villafuerte and Don Anselmo Ranches; on the east by lands of Francisco Cabio, Don Santiago Lopez, Anacleto Maligalig, a small estero and Don Antero Bobadilla; on the south by lands of Feliciano Jabierto, mangrove swamps, an estero and Doña Juana Allarey; and on the west by the road leading to the port of Cota. (2d Record, book 1, Lucena, fol. 113, lot No. 38, 1st entry.)

Parcel No. 2.—Situated in the sitio of Cota, measures one hectare, thirty-one ares and seventy-five centares, bounded on the north by land of Don Julian Jabierto; on the east by the road leading to the port of Cota; on the south by land of Melecio Allarey; and on the west by the River Yyam. (2d Record, book 1, Lucena, fol. 116, lot No. 39, 1st entry.)

Parcel No. 3.—Situated in the barrio of Cota, measures sixty-five ares, and fifty-two centares. Bounded on the north by Doña Maria Guinto; on the east by the road leading to the port; on the south by Don Melecio Allarey; and on the west by Doña Maria Guinto. (2d record, book 1, Lucena, fol. 119, lot No. 40, 1st entry.)

92 Parcel No. 4.—Situated in the sitio of Cota; measures one hectare, ninety-nine ares and thirty-seven centares. Bounded on the north by Don Francisco Villaseñor; on the east by the road leading to the port and the lot occupied by the house of the port captain; on the south by the River Dumaca; and on the west by Don Francisco Villaseñor. (2d Record, book 1, Lucena, fol. 122, lot No. 41, 1st entry.)

And as by virtue of a resolution of the local board of Lucena, dated the 7th of September, 1888, the applicant was adjudicated the ownership of said land by gratuitous composition in accordance with the Royal Decree of December 26, 1884, * * * he having presented the proper stamped paper for this title, class $0.50, num. * * * duly attached hereto and cancelled, I issue this present title deed in order that by virtue of the same the said Don Faustino Enrique may have and hold the said land as legal owner thereof.

This title will be registered in the office of the clerk of the court of this province and in the court at present charged with the registration of property.

Given in Tayabas this twelfth day of December, one thousand eight hundred and eighty-eight.

The Chief of the Province,

(Sgd.) MANUEL BONES.

Stamps.

This title deed is registered at folio 23 of the only book.
(Sgd.) ANASTACIO BARCELÓ,
*Secretary of the Local Board.*

93 The foregoing document is inscribed at the pages and in the books cited at the margin of the description of each property.
Tayabas, May 1, 1891.
(Sgd.) AGUSTIN ENCISO, *Register.*

94 EXHIBIT No. 2.

(Parcel 21.)

I, Filemon Perez, of age, married, and a resident of Lucena, Province of Tayabas, by these presents set forth and declare:

I. That I am the owner in fee simple of a strip of land situated in the sitio of Cotta, town of Lucena, Tayabas, the description of which is as follows:

A strip of land of 16,094 square meters in extent, parcel No. 21 of the plan, bounded on the north and south by Doña Romana Velasquez; on the east by Melecio Allarey; and on the west by the road leading to Cotta.

II. That the foregoing strip of land was acquired by me by purchase from Doña Romana Velasquez, according to a public instrument executed in my favor before the notary public Don Crespo Ella of Lucena.

III. That for and in consideration of the sum of thirteen thousand pesos (P13,000) Philippine currency, paid to me by Don Francisco Ycasiano, of Manila, I cede, sell and transfer to him definitely and in perpetuity, all of my rights and interests to and in the said strip of land described in the first paragraph of this document, and from this date the said vendee may freely dispose of the same in any manner he may see fit.

In testimony whereof I sign these presents this sixteenth day of August, one thousand nine hundred and twelve, in Manila, Philippine Islands.
(Sgd.) FILEMON PEREZ.

Signed in the presence of
(Sgd.) JUAN CARMONA.
" EXEQUIEL AMPIL.

Stamps.

95 EXHIBIT No. 1.

(Parcels 23-*a*, 23-*b*, 23-*c*, and 23-*d*.)

In this barrio of Cota, within the jurisdiction of the pueblo and capital of Tayabas, this 22d day of October, 1832, before me, the senior judge on duty, Don Francisco de San Juan, and the judge of Palmas, Don Juan de San Juliano, accompanied by a witness

Don Saturnino Eleuterio, married, appeared at our annual assizes and set forth that for the sum of $15.00 he had bought from Francisco de San Miguel, married, a parcel of land of six and a half cavanes capacity, more or less, of rice seed, bounded on the north with my own land and that of Don Vicente Pascual de los Santos; on the east by Gabriel Diego Enriquez and Luisa de Sta. Ana; on the south by said Luisa and Don Gregorio de los Santos; and on the west by Don Domingo Policarpio; that the said vendor promises that henceforth his children and relatives will not be able to claim the said land, and if any person should lay claim to them before any of the king's judges the said vendor will defend the rights to the land. The witnesses who attest this deed of sale are Don Domingo Policarpio and Don Vicente Pascual de los Santos. And in witness of all of which I sign these presents together with the said vendor, and his brother Gabriel San Miguel. Those who are unable to write placed a cross at the end of their names with the witnesses already mentioned. The judge of Palmas and the accompanying witness.

(Sgd.) FRANCISCO DE SAN JUAN,
" JUAN DE SAN JULIANO,
" FRANCISCO DE SAN MIGUEL, ETC.

96 Heading and Title.

*Hearing.*

The session was opened on the morning of the 20th of November, 1913, and was presided over by the Honorable Mariano Cui, judge of the Court of First Instance of the 7th Judicial District.

The above entitled case having been called for hearing there appeared for the party plaintiff, Mr. E. A. Perkins, and for the party defendant, Mr. Carlos Ledesma.

Perkins: We will submit evidence by parcels.

*Evidence for the Defendant.*

ROMANA VELASQUEZ was called to the stand. Witness is 78 years of age, a widow, land owner and resident of Lucena, Tayabas. After being duly sworn she testified as follows, her testimony being interpreted by the official interpreter Mr. Enrique Halili: (She testifies with regard to parcel 21.)

*Testimony of Romana Velasquez.*

Direct examination.

By Mr. Ledesma:

Q. Do you know Faustino Enriquez?
A. Yes, sir.
Q. How is that?
A. He was my late husband.

Q. Do you own any property in the barrio of Cota of this town of Lucena?

97 A. Yes, sir.

Q. How did you acquire that property?

A. I bought it.

Q. From whom?

A. It appears in the instruments but I do not now remember the names. I have the will.

Ledesma: I mark parcel 21 as Exhibit 1.

Q. Do you know this Exhibit 1?

A. Yes, sir; it is a title deed issued in favor of my husband, Faustino Enriquez.

Q. Where are the parcels referred to in this Exhibit 1?

A. The land where the government building stands and where the railroad station is. It is a tract of land that measures 38 hectares.

Q. Do you know if this Exhibit 1 refers to the land where the railroad station at Lucena is?

A. Yes, sir.

Q. If your late husband was the person who owned the parcel of land where the Lucena railroad station now stands and which is referred to in this Exhibit 1, how is it that you are the owner of the land, seeing, that your husband's name is the one that appears in this deed?

A. My late husband left it to me at his death.

Q. Did you have any children by your late husband?

A. Yes, sir.

Q. How many?

A. Six.

Q. How are these children named?

98 A. Victoria, Ambrosio, Marcelina, Zacarias, Feliciano and Bernardo.

Q. Did your late husband execute a will before he died?

A. Yes, sir; here is a copy.

Q. This land that is now occupied by the railroad station, was it devised to you by your late husband?

Perkins: The document is the best proof.

Court: It is admitted as preliminary proof.

A. Yes, sir; to my children Zacarias, Bernardo and Ambrosio.

Q. How long did your husband and yourself afterwards possess this land that is now occupied by the railroad station?

A. About fifty years.

Perkins: The testimony refers to nothing but parcel 21.

Ledesma: Is the parcel 21 which is occupied by the railroad station the one which is described in this first parcel of Exhibit 1?

A. Yes, sir.

Q. The tract of 38 hectares?

A. Yes, sir.

Q. The parcel on which the government building stands was segregated from this parcel?

A. Yes, sir; the 1st on which the station stands also belongs to that parcel.

Q. That is all, and I present this Exhibit 1.

Cross-examination.

By the Party Plaintiff:

Perkins: So that you are not the owner of parcel 21, is not that so ?

99 A. I am the owner because I formerly bought it and gave it to my children; they sold it and I repurchased it.

Q. But your husband left that parcel to his children Ambrosio and Zacarias?

A. Yes, sir.

Q. What did Ambrosio and Zacarias do with this land?

A. They sold it and I later bought it.

Q. To whom did they sell it?

A. To Agustin Alvarez.

Q. Agustin Alvarez?

A. Yes, sir; they sold it to him and I bought it from him.

Q. Where are those documents?

A. I also, after I repurchased it, sold it to my son-in-law, Simeon Perez and he has all the documents.

Q. So that at the present time you are the owner by reason of your having repurchased the land from your children Ambrosio and Zacarias?

A. Zacarias sold it to Agustin Alvarez and I bought from the latter; with respect to Ambrosio, I repurchased from my grandson, son of this latter.

Q. What I desire to know is, are you the owner of that land at the present time?

A. No, sir; because I sold it to my son-in-law Simeon Perez.

Q. So that at the present time you have no interest or participation in the land on which is situated the railroad station at Lucena, in this Province of Tayabas?

A. Yes, sir; I have no interest or share therein because I sold it.

Q. That is all.

100 Ledesma: I present as Exhibit 2, the deed of sale of land devised to Filemon Perez, in favor of Francisco Icasiano which refers to parcel 21. I also present as Exhibit 3 the record of civil case No. 199 of this court, especially with regard to that part in which the will of Faustino Enriquez was probated, at folio 26. The translation into Spanish of Faustino Enriquez' will, page 41; the report of the administrator of the property of Faustino Enriquez at page 51; and the order of Judge Powell found at page 66.

Perkins: I have no objection to the authenticity of the signature of Mr. Filemon Perez.

Ledesma: We will present the other documents referring to parcel 21 later. I will send them to the other side by mail.

Perkins: I ask the court to have a simple copy made of the documents presented so that they can be attached to the record of this case.

Court: Granted.

That is all.

SIMEON PEREZ was called to the stand. Witness is 57 years of age, married, a land owner and resident of Lucena of the Province of Tayabas; after being duly sworn, witness testified as follows, his testimony being interpreted by the official interpreter:

101 *Testimony of Simeon Perez.*

Direct examination.

By Mr. Ledesma:

The witness will testify with regard to parcels 21-*a* and 21-*b*.

Q. Have you owned any property in the barrio of Cuta of this town?

A. Yes, sir.

Q. How did you acquire this property?

A. By purchase.

Q. From whom?

A. From Romana Velasquez.

Q. Is this property that you refer to, the property described in the plan as parcels 21-*a* and 21-*b*?

A. Yes, sir.

Ledesma: I am going to offer in evidence as Exhibit 1 the document which is located at folio 79 of this same record, a certified copy by the notary who certified the sale.

Perkins: I oppose the admission of the document because notaries public, according to the laws in force, have no authority to certify documents.

Ledesma: There are documents in existence, but they are in the safe of Mr. Filemon Perez.

Perkins: Then you will present the documents.

Ledesma: Counsel for the party defendant will file the original of the document at page 79 of this record on the 2d of December.

Nothing more.

Cross-examination.

By the Plaintiff:

Perkins: So that at the present time you are the proprietor of parcels 21-*a* and 21-*b*?

102 A. I am not any longer.

Q. Have you already sold them, and to whom?

A. We sold them to Don Calixto Berbari.
Q. At the present time have you no interest or share of any sort in the expropriated lands?
A. Not now.

That is all.

Ledesma: I have finished with parcels 21-*a* and 21-*b*.

Nothing more.

DEOGRACIAS MALIGALIG was called to the stand. Witness is 51 years of age, married, a laborer and resident of Lucena, Province of Tayabas; after being duly sworn he testified as follows, his testimony being interpreted by the official interpreter:

*Testimony of Deogracias Maligalig.*

Direct examination

By Mr. Ledesma:

This witness will testify as to parcels 23-*a*, 23-*b*, 23-*c* and 23-*d*.

Q. You have owned properties in the sitio of Cuta, in this municipality of Lucena, Tayabas?
A. Yes, sir.
Q. Are you the owner of parcels 23-*a*, 23-*b*, 23-*c* and 23-*d*?
A. Yes, sir.
Q. Since when?
A. For more than twenty years.
Q. How did you acquire those parcels?
A. I inherited them from my mother, Toribia Abastillos.
103 Q. Have you any documents referring to those parcels?
A. Yes, sir.
Q. Where are they?
A. It is this (handing over a document marked Exhibit 1.)
Q. Were you ever at any time disturbed in the possession of these parcels?
A. No, sir.
Q. In what character did you possess these parcels?
A. As owner.
Q. Did you ever lose possession of these parcels?
A. No, sir.

Nothing more.

Court: Is this Exhibit 1 a document of acquisition in favor of your mother or in favor of yourself?
A. It is a document of acquisition in favor of my grandfather.
Q. What was your grandfather's name?
A. Saturnino Eleuterio.
Q. How did it fall into the hands of your mother?
A. My mother inherited it from my grandfather.

Q. When did your mother inherit it?
A. On the death of my grandfather.
Q. When was that?
A. My grandfather died before I was born.
Q. Who was in possession of the lands which comprise parcels 23-*a*, 23-*b*, 23-*c* and 23-*d* as far back as you can remember?
A. My mother.
Q. How many children did your mother have?
104 A. Two, but the other one died.
Q. And why is it that only you inherited this land?
A. Because I am the only child.
Q. Your brother that died; did he leave any children at his death?
A. When my brother died he was a child at the breast.
Q. When did your mother die?
A. About twenty years ago, more or less.
Q. What was your mother's name?
A. Toribia Abastillos.
Q. Do these parcels form one sole tract?
A. Yes, sir.
Q. Are the parcels 23-*a*, 23-*b*, 23-*c* and 23-*d* now separated?
A. On account of the sale of parcel 23 which is located between the parcels here in question.

Cross-examination.

By the Plaintiff:

Perkins: At the present time you are the only proprietor of parcels 23-*a*, 23-*b*, 23-*c* and 23-*d*?
A. Yes, sir.
Q. Have you at any time been disturbed in the possession of this land?
A. No, sir.
Q. Is there any charge, encumbrance or mortgage on this land?
A. No, sir.
Q. Is there any real title deed to this land?
A. Yes, sir; but the title is in the possession of the person to whom I sold my land on the north.
105 Q. Is it included in this title?
A. Yes, sir.
Court: Issued by the Spanish government?
A. It is a title by composition.
Q. In your name?
A. Yes, sir.
Q. Who has it?
A. Trinidad Paz.
Q. Is it registered in the Land Court?
A. Yes, sir.
Q. In your name?
A. Yes, sir.

Q. Why did you give the title to this Trinidad Paz? Why was part of this land sold? Or is there a parcel included?
A. Because she took it over from me when I sold 600 coconut trees and two cavanes of land on the north.
Q. Part of this land?
A. It does not form part.
Q. Was the land sold by you described in the title deed as a parcel?
A. Yes, sir.

Court: Let him exhibit the title deed.
G. Reyes: I have the title.

The party defendant states that it will present the corresponding title deed on the 2d of December.

Perkins: Did this Trinidad Paz mortgage this land, or is there any encumbrance on the land in question?
A. No, sir.

106 Ledesma: I have not seen that title deed, if you refer to this itself.
Court: You might ask the fiscal.

The fiscal at once showed the entry.

Perkins: I reserve the right to object to the admission of this document until after it has been translated into Spanish, because I do not understand Tagalog.
Court: Granted.

Nothing more.

MELECIO ALLAREI (ALLAREY), 73 years of age, married, a land owner and resident of Lucena, Province of Tayabas. After having been duly sworn, witness testified as follows, his testimony being interpreted by the official interpreter:

*Testimony of Melecio Aliarei.*

Direct examination.

By Mr. Ledesma:

The witness will testify with regard to parcels 22-*a*, 22-*b*, 22-*c*, 22-*d* and 22-*e*.

Q. Are you the owner of parcels 22-*a*, 22-*b*, 22-*c*, 22-*d* and 22-*e*?
A. Yes, sir.
Q. How did you acquire these parcels of land?
A. I bought them.
Q. From whom?
A. From Santiago Lopez.
Q. Have you any deeds of sale?
A. Yes, sir.
Q. Where are they?

107 A. They were destroyed in the last fire at Lucena in this Province of Tayabas.

Q. Was it a notarial document?

A. It was an instrument executed before the clerk of the Court of First Instance in the time of the Spanish Government. I bought those parcels about 25 years ago.

Q. Have you held continuous possession of those parcels ever since you bought them?

A. Yes, sir.

Q. Did nobody ever disturb you?

A. Only lately I sold them to Calixto Berbari.

Q. Have you been disturbed in your possession of them?

A. No, sir.

Q. Have you paid any rent for them or have you recognized any right in any other person?

A. No, sir.

Nothing more.

Cross-examination.

By the Plaintiff:

Perkins: Do you know if the old document that you had was inscribed in the old register of property?

A. I do not know; I cannot say if this document was registered in the register of property.

Q. Have you any real title?

A. No, sir. It was only executed before the clerk of the Court of First Instance of Tayabas in the time of the Spanish.

Q. During the time that you were the owner of this land, did ever any one disturb you in your possession or did you ever sell it with right of repurchase?

108 A. No, sir.

Q. And how long ago is it since you sold this land?

A. A short while ago; I sold it to Berbari.

Q. This year?

A. Yes, sir.

Q. Before the fire occurred in Lucena?

A. Before the fire occurred in Lucena.

Q. Then you turned over the old documents?

A. He was not able to save the old documents.

Q. Why not?

A. Because he did not take them from me.

Q. Because your house burned down?

A. Yes, sir.

*Agreement.*

The parties agreed that the fire in Lucena took place on the 19th of September of this year.

Q. Can you remember what was contained in the documents which were burned in the fire?

A. I cannot recall all.

Q. What was the substance of the documents?

A. I do not remember now and furthermore, Santiago, from whom I bought the lands is dead. If he were alive I could bring him here.

Q. Do you know if Mr. Berbari has sold the lands to anybody else?

A. I do not know.

Nothing more.

Court: Now that the document of Deogracias Maligalig which is in the register of property has been exhibited, the fiscal is
109 ordered to issue a simple copy of the said entry, marked with the proper number, and marking as Exhibit 2 the parcel belonging to Deogracias Maligalig.

That is all.

CALIXTO BERBARI is called to the stand. Witness is 32 years of age, married, a merchant, resident of Lucena, Province of Tayabas. After being duly sworn, he testified as follows.

*Testimony of Calixto Berbari.*

Direct examination.

By Mr. C. Ledesma:

Q. Are you the owner of any parcel of land in the barrio of Cuta in this town of Lucena?

A. Yes, sir.

Q. What parcel?

A. Parcels 21-*a*, 21-*b*, 22-*a*, 22-*b*, 22-*c*, 22-*d* and 22-*e*; 23-*a*, 23-*b*, 23-*c* and 23-*d*.

Q. Are they your private property or that of some company?

A. I bought them in representation of the Tayabas Company which I represent.

Q. From whom did you buy them?

A. Parcel 21 I bought from Francisco Icasiano; 21-*a* and 21-*b* from Simeon Perez; 22-*a*, 22-*b*, 22-*c*, 22-*d* and 22-*e* from Aliarei; 23-*a*, 23-*b*, 23-*c* and 23-*d* from Maligalig.

Q. Where do you keep the deed of sale?

A. At present I have it in Manila.

Ledesma: I will present the deeds of sale on the 2d of December.

Perkins: Then I will cross-examine this witness after the documents have been presented in evidence.

110 Ledesma: We have no more proofs.

Court: The hearing will be continued until the 2d of December, 1913.

The session adjourned.

(Stenographer's certificate follows.)

111 EXHIBIT No. 1.

(Parcels 21-*a*, 21-*b*.)

Received of Don Simeon Perez the sum of two thousand three hundred forty-three pesos and sixty centavos, the value of my land expropriated by the Manila Railroad Company for the additional station at Lucena. The said land measures 1,116 square meters, at P2.10 per square meter; sold to the Tayabas Land Company, the manager of which is Calixto Berbary.

The said land is bounded as follows: on the north, by the land mortgaged to me by the brother and sister Inocente Toleta and Odoña Villon; on the east by Deogracias Maligalig; on the south, by Melecio Allarey; and on the west by Simeon Perez. The three last-named gentlemen have had their above mentioned lands expropriated by the Manila Railroad Company.

Lucena, July 8, 1913.

(Sgd.) ROMANA VELASQUEZ.

(Sgd.) HONORIO LANUZA.
" JOSE ALLAREY.

Subscribed and sworn to before me by Doña Romana Velasquez this 8th day of July, 1913.

(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires on December 31, 1914.

Seal.
Reg. No. 124.
Page 42.

112 EXHIBIT No. 2.

(Parcels 21-*a*, 21-*b*.)

EXHIBIT No. 4.

(Parcel 21.)

Know all men who see and read these presents: That I, Pilar Enriquez, married to Silvestre Ubaldo, both of age and residents of Lucena, Tayabas, P. I., in consideration of the sum of one thousand pesos (P1,000) Philippine currency, duly paid to me in cash and to my entire satisfaction by Doña Romana Velasquez, a person of age and resident of Lucena, Province of Tayabas, P. I., make known by these presents that I sell, cede and transfer to the said Doña Romana Velasquez, her heirs and assigns, the parcel of land measur-

ing 23,386 square meters which is situated in the barrio of Cotta, municipality of Lucena, Tayabas, P. I., within the metes and bounds as follows: On the north and west, by land of Doña Romana Velasquez; on the south, by the land of Doña Hilaria Enriquez; and on the east, by the land of Melecio Allarey.

I also make known that it is agreed and covenanted with the said Doña Romana Velasquez (the purchaser) that she is the absolute owner of the said property, free of all charge and encumbrance, and that the said purchaser may exercise her right to transfer the same to any other person. I also set forth that I remain responsible to the said Doña Romana Velasquez, her heirs and assigns, for the property of the said parcel of land, the title to which I undertake to defend, now and always, against any just claim that may be presented by any person whomsoever.

In witness whereof I sign these presents with my husband in Lucena, this 13th day of January, 1911.

(Sgd.) PILAR ENRIQUEZ.
" SILVESTRE UBALDO.

Signed in the presence of
(Sgd.) JUAN FERNANDEZ.
" HONORIO LANUZA.

113 UNITED STATES OF AMERICA,
*Philippine Islands,*
*Municipality of Lucena, Tayabas, ss:*

In Lucena, Tayabas, on the 13th of January, 1911, A. D., personally appeared before me Doña Pilar Enriquez and Don Silvestre Ubaldo, whom I personally know to be the persons who executed the foregoing document, and ratified the above as being an act of their own free will and deed.

Pilar Enriquez did not show a cedula by reason of her sex.

Silvestre Ubaldo exhibited cedula No. F-699367, Lucena, March 8, 1910.

(Sgd.) CRISPO ELLA,
*Notary Public.*

Commission expires December 31, 1912.

114 EXHIBIT No. 3.

(Parcels 21-*a*, 21-*b*.)

EXHIBIT No. 5.

(Parcel 21.)

By these presents, we, the undersigned, Perpetua and Concepcion Enriquez, sisters, married, of age and residents of Lucena, Tayabas, Philippine Islands, set forth and declare that we have received to our

entire satisfaction and in cash the sum of two hundred fifty pesos (P250.00) Philippine currency, from the hands of Emerenciana Cordero, a widow, of age and a resident of Lucena; that the said sum is the second installment, due on the 31st of March, 1910, on the price of the lot belonging to us situated in the barrio of Cotta, Lucena, the sale of which was effected before a notary public, Crispo Ella, on the 28th of January, 1910. In witness whereof we sign these presents in Lucena, this 11th day of April, 1910.

(Sgd.) PERPETUA ENRIQUEZ.
" CONCEPCION ENRIQUEZ.

The foregoing document was subscribed and sworn to before me by the sisters Perpetua and Concepcion Enriquez, whom I certify to know personally. They did not exhibit cedulas as they are exempt by reason of their sex. This 11th day of April, 1910. Lucena, Tayabas, Philippine Islands.

(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires on the 31st of December, 1910.

Seal.
Stamps.

115 Know all men by these presents: That I, Emerenciana Cordero, a widow, of age and a resident of Lucena, Tayabas, Philippine Islands, in consideration of the sum of one thousand two hundred twelve pesos (P1,212.00) Philippine currency, in hand paid to me by Romana Velasquez, a widow, of age, and a resident of Lucena, Tayabas, P. I., by these presents sell and transfer in actual and definite sale to the said Romana Velasquez, her heirs and assigns, a lot or parcel of land the description of which is as follows: A parcel which measures one hectare, seventy-six ares and three centares, a little more or less, formerly unirrigated land and now intended for building purposes, situated in the barrio of Cotta of the municipality of Lucena, bounded on the north by the Tayabas provincial government land; on the south by the land owned in common by the sisters Pilar and Hilaria Enriquez; on the east by an irregularly shaped creek, on the other side of which is the land of Gregorio and Policarpio Enriquez; and on the west by a crooked estero or creek, on the other side of which is the land of Romana Velasquez; of which land I am the owner by reason of having acquired it by purchase from the sisters Perpetua and Concepcion Enriquez.

In witness whereof I sign these presents in Lucena, this 9th day of May, 1910.

(Sgd.) EMERENCIANA CORDERO.

In the presence of
(Sgd.) J. F. SALANDANAN.
" AGUSTIN ALVAREZ.

116 UNITED STATES OF AMERICA,
*Philippine Islands:*

In Lucena, this 9th day of May, 1910, personally appeared before me Emerenciana Cordero, whom I know to be the person who executed the foregoing instrument, and ratified the same under oath. She did not exhibit a cedula by reason of her sex.

Before me.
(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires December 31, 1910.

Seal.
Stamps.

117 Know all men by these presents: That in Lucena, Province of Tayabas, P. I., this twenty-eight day of January, one thousand nine hundred and ten, we, Perpetua Enriquez and Concepcion Enriquez, respectively married to Candido Abellanosa and Manuel Alcantara, residents of Lucena, and with due authority of our spouses therefor, and the said Candido Abellanosa and Catalina Mendiola, a widow, of age, a resident of Lucena, as guardian of Concepcion Enriquez, parties of the first part, and Emerenciana Cordero, a widow, of age, and a resident of Lucena, party of the second part; hereby make known that both said parties have freely and spontaneously executed and covenanted the following:

That we, Perpetua and Concepcion Enriquez, with the permission of our respective husbands Candido Abellanosa and Manuel Alcantara first had, of the first part, have sold and transferred on this date and by means of this document to Emerenciana Cordero, of the second part, and to her heirs and assigns, a parcel of land belonging to us in common and pro indiviso, which land is described as follows: A rectangular parcel whose eastern and western sides follow the actual form of their boundaries, which are respectively two creeks; formerly unirrigated land, now intended for building purposes, situated in the barrio of Cotta, in the municipality of Lucena, Tayabas, P. I.; it measures one hectare, seventy-six ares and three centares, a little more or less, and is bounded on the north by land formerly belonging to the undersigned but which now belongs to the provincial government of Tayabas; on the south by the land owned in common by the sisters Pilar and Hilaria Enriquez; on the east by an
118 irregularly shaped creek on the other side of which is land belonging to Gregorio and Policarpia Enriquez; and on the west by another irregularly formed creek on the other side of which is land of Romana Velasquez. This land is not improved, only scrub and wild trees grow upon it and it is inscribed on the tax list in the names of the vendors Perpetua and Concepcion Enriquez.

That we, Perpetua and Concepcion Enriquez of the first part, have actually and definitely sold the said land to Emerenciana Cordero, of the second part, in consideration of the sum of one thousand two hun-

dred pesos (P1,200.00) Philippine currency, of which amount said Emerenciana Cordero has paid to us and we acknowledge to have received to our entire satisfaction, on this date the sum of seven hundred pesos (P700.00) Philippine currency, in cash, and we have agreed that she shall pay to us two hundred and fifty pesos (P250.00) on the 31st of March, 1910, and the remaining two hundred fifty pesos (P250.00) as soon as the said Emerenciana Cordero is able to secure a Torrens title to the said property in her own name.

That we, Perpetua and Concepcion Enriquez, set forth and declare that we acquired the above-mentioned land and have the dominion and possession thereto pro indiviso, as a part of our inheritance in the division of the property of our deceased grandfather Faustino Enriquez, and that the said land is part of a larger tract which the said Faustino Enriquez had inscribed in his name on the register of property of this province.

That we, Candido Abellanosa and Manuel Alcantara, the respective husbands of Perpetua and Concepcion Enriquez, set forth and declare that we consent to and execute with them all the terms and conditions of this sale, which is verified by the said Perpetua and Concepcion Enriquez with our marital permission.

119 That we, Candido Abellanosa and Catalino Mendiola, as guardians of Concepcion Enriquez, one of the vendors, set forth and declare that we give our consent to the said Concepcion Enriquez in order that she may alienate the property referred to in this contract.

That Emerenciana Cordero, of the second part, sets forth and declares that she accepts this contract in all of its terms and conditions, and that she undertakes to pay to the vendors the sum of two hundred fifty pesos (P250.00) on the 31st day of March, 1910, and the remaining two hundred fifty pesos (P250.00) as soon as can obtain a title to the property, in her own name, in accordance with the new Land Registration Act.

Lastly, the vendors, Perpetua and Concepcion Enriquez, set forth that on this date they deliver and have delivered the possession of the above described land to the vendee Emerenciana Cordero; that the said land is free of all charges and incumbrances, and that they hold themselves bound to the purchaser for the eviction and warranty of the same in case any claim is filed attacking the dominion of the land, or if any person comes forward with a better right thereto.

In testimony whereof we sign these presents in Lucena, on the day, month and year above set forth.

(Sgd.) PERPETUA ENRIQUEZ.
" CONCEPCION ENRIQUEZ.
" CANDIDO ABELLANOSA.
" MANUEL ALCANTARA.
" CATALINO MENDIOLA.
" EMERENCIANA CORDERO.

Witnesses to the signatures:
(Sgd.) TIMOTEO NARANJO.
" LUCIANO L. SANTOS.

120 UNITED STATES OF AMERICA,
*Philippine Islands:*

In Lucena, this 28th day of January, 1910, personally appeared before me, the undersigned notary, Perpetua Enriquez, Concepcion Enriquez, Candido Abellanosa, Manuel Alcantara, Catalino Mendiola and Emerenciana Cordero, all of whom I know to be the persons who executed the foregoing instrument, and in my presence affirmed and ratified the contents of the same under oath, declaring the same to be an act of their own free will and deed.

Candido Abellanosa exhibited cedula No. G52940, dated Lucena, July 19, 1909. Manuel Alcantara exhibited cedula No. F794165, dated Lucena, April 16, 1909.

I certify,

(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires December 31, 1910.

Seal.
Stamps.

121 DEFENDANT'S EXHIBIT X.

I, Ramon Crisologo, a notary public in this city of Manila, certify that the following instruments were certified to before me:

A deed of sale of a parcel of land situated in Tayabas, executed by Deogracias Maligalig on the 1st of July, 1913, in favor of the Tayabas Land Co., according to entry No. 101, folio 27 of my notarial register. (Witnesses, Jacinto Allarey, and Filemon Perez.)

Deed of sale of a parcel of land situated in Tayabas, executed by Deogracias Maligalig on July 1, 1913, in favor of the Tayabas Land Co., according to entry No. 104, folio 27 of my notarial register. (Witnesses, Jacinto Allarey, and Filemon Perez.)

Deed of sale of a parcel of land situated in Tayabas, executed by Deogracias Maligalig on July 1, 1913, in favor of the Tayabas Land Co., according to entry No. 107, folio 28 of my notarial register. (Witnesses, Jacinto Allarey and Filemon Perez.)

Deed of sale of a parcel of land situated in Tayabas, executed by Deogracias Maligalig on July 1, 1913, in favor of the Tayabas Land Co., according to my entry No. 110, folio 28 of my notarial register. (Witnesses, Jacinto Allarey and Filemon Perez.)

Deed of sale of a parcel of real estate executed by Simeon Perez on the 1st of July, 1913, in favor of the Tayabas Land Co., according to entry No. 113, folio 29, of my notarial register. (Witnesses, Jacinto Allarey and Deogracias Maligalig.)

Deed of sale of a parcel of real estate executed by Simeon Perez on the 1st of July, 1913, in favor of the Tayabas Land Co., according to entry No. 116, folio 30 of my notarial register. (Witnesses, Jacinto Allarey and Deogracias Maligalig.)

122 Deed of sale of a parcel of real estate executed by Jacinto Allarey on July 1, 1913, in favor of the Tayabas Land Co., according to entry No. 119, folio 30 of my notarial register. (Witnesses, Deogracias Maligalig and Filemon Perez.)

Deed of sale of a parcel of real estate executed by Jacinto Allarey on July 1, 1913, in favor of the Tayabas Land Co., according to entry No. 120, folio 30 of my notarial register. (Witnesses, Deogracias Maligalig and Filemon Perez.)

Deed of sale of a parcel of real estate executed by Jacinto Allarey on July 1, 1913, in favor of the Tayabas Land Co., according to entry No. 121, folio 31 of my notarial register. (Witnesses, Deogracias Maligalig and Filemon Perez.)

Deed of sale of a parcel of real estate executed by Jacinto Allarey on July 1, 1913, in favor of the Tayabas Land Co., according to entry No. 122, folio 31 of my notarial register. (Witnesses, Deogracias Maligalig and Filemon Perez.)

Deed of sale of a parcel of real estate executed by Jacinto Allarey on July 1, 1913, in favor of the Tayabas Land Co., according to entry No. 123, folio 31 of my notarial register. (Witnesses, Deogracias Maligalig and Filemon Perez.)

I certify that all the entries and folios above-mentioned are truly copied from my notarial register.

Manila, November 28, 1913.

(Sgd.) RAMON CRISÓLOGO,
*Notary Public.*

My commission expires on December 31, 1914.

123 EXHIBIT Z-1.

*Deed of Sale.*

Know all men by these presents: That I, Deogracias Maligalig, of age, married, a resident of the municipality of Lucena, Province of Tayabas, Philippine Islands, having the necessary legal capacity to make this contract, freely and spontaneously set forth and declare:

First. That in the sitio called Cotta, municipality of Lucena, Tayabas, I am the owner in fee simple of the following property:

"A parcel of land measuring 1,466 square meters, the bounds of which are, on the north and south, land belonging to me; on the east, land of Trinidad Paz; and on the west, land of Melecio Allarey. Marked on the plan No. 23-c."

Second. That the said property is at present free from all charges and encumbrances.

Third. That the Manila Railroad Company desires to occupy the said property for the extension of its line.

Fourth. That in consideration of the sum of one thousand five hundred thirty-nine pesos and thirty centavos (P1,539.30), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents I hereby definitely sell, cede and transfer in full dominion to the said

Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fifth. It is hereby covenanted and agreed that the Tayabas
124 Land Co., is henceforward the absolute owner of the above-described parcel of land, free of all charges and encumbrances, and that I hold myself responsible to the said company for any claim which may be presented against the same, and I hold myself obligated to cancel and pay any mortgage or charge against the said property which was imposed thereon prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if I fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) DEOGRACIAS MALIGALIG.

Signed in the presence of

(Sgd.) JACINTO ALLAREY.
" FILEMON PEREZ.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, A. D., personally appeared before me Don Deogracias Maligalig, whom I certify of my own knowledge to be the person who executed the foregoing instrument and ratified it as being his own free will and deed. He exhibited his cedula No. F1,231,020, issued on April 25, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above-mentioned.

____ ____,
*Notary Public.*

125 EXHIBIT Z-2.

*Deed of Sale.*

Know all men by these presents: that I, Deogracias Maligalig, of age, married, a resident of the municipality of Lucena, Province of Tayabas, Philippine Islands, having the necessary legal capacity to make this contract, freely and spontaneously set forth and declare:

First. That in the sitio called Cotta, municipality of Lucena, Tayabas, I am the owner in fee simple of the following property:

"A parcel of land, measuring 1,512 square meters, bounded on the north and south by land belonging to me; on the east, by land of Trinidad Paz; and on the west, by land of Melecio Allarey. Marked on the plan as No. 23-*b*."

Second. That the said property is at present free from all charges and encumbrances.

Third. That the Manila Railroad Company desires to occupy the said property for the extension of its line.

Fourth. That in consideration of the sum of one thousand five hundred eighty-seven pesos and sixty centavos (P1,587.60), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents I hereby definitely sell, cede and transfer in full dominion to the said Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fifth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-described
126 parcel of land, free of all charges and encumbrances, and that I hold myself responsible to the said company for any claim which may be presented against the same, and I hold myself obligated to cancel and pay any mortgage or charge against the said property which was imposed thereon prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if I fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) DEOGRACIAS MALIGALIG.

Signed in the presence of

(Sgd.) JACINTO ALLAREY.

" FILEMON PEREZ.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, A. D., personally appeared before me Don Deogracias Maligalig, whom I certify of my own knowledge to be the person who executed the foregoing instrument and ratified it as being his own free will and deed. He exhibited his cedula No. F1231020, issued on June 25, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above mentioned.

____ ____,
*Notary Public.*

127 EXHIBIT Z-3.

*Deed of Sale.*

Know all men by these presents: that I, Deogracias Maligali of age, married, a resident of the municipality of Lucena, Provinc

of Tayabas, Philippine Islands, having the necessary legal capacity to make this contract, freely and spontaneously set forth and declare:

First. That in the sitio called Cotta, municipality of Lucena, Tayabas, I am the owner in fee simple of the following property:

"A parcel of land, measuring 1,423 square meters, bounded on the north by land of Romana Velasquez; on the south and east by lands belonging to me; and on the west by that of Melecio Allarey. Marked on the plan as No. 23-*d*."

Second. That the said proerpty is at present free from all charges and encumbrances.

Third. That the Manila Railroad Company desires to occupy the said property for the extension of its line.

Fourth. That in consideration of the sum of one thousand four hundred ninety-three pesos and ten centavos (P1,493.10), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents I hereby definitely sell, cede and transfer in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fifth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-described
128 parcel of land, free of all charges and encumbrances, and that I hold myself responsible to the said company for any claim which may be presented against the same, and I hold myself obligated to cancel and pay any mortgage or charge against the said property which was imposed thereon prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if I fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) DEOGRACIAS MALIGALIG.

Signed in the presence of

(Sgd.) JACINTO ALLAREY.

" FILEMON PEREZ.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, A. D., personally appeared before me Don Deogracias Maligalig, whom I certify of my own knowledge to be the person who executed the foregoing instrument and ratified it as being his own free will and deed. He exhibited his cedula No. F1231020, issued on April 25, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above-mentioned.

——— ———,
*Notary Public.*

129 EXHIBIT Z-4.

*Deed of Sale.*

Know all men by these presents: that I, Deogracias Maligalig, of age, married, a resident of the municipality of Lucena, Province of Tayabas, Philippine Islands, having the necessary legal capacity to make this contract, freely and spontaneously set forth and declare:

First. That in the sitio called Cotta, municipality of Lucena, Tayabas, I am the owner in fee simple of the following property:

"A parcel of land measuring 1,573 square meters, bounded on the north, south and east by lands belonging to me; on the west by that of Melecio Allarey. Marked on the plan as No. 23-a."

Second. That the said property is at present free from all charges and encumbrances.

Third. That the Manila Railroad Company desires to occupy the said property for the extension of its line from Lucena to Lanao.

Fourth. That in consideration of the sum of one thousand six hundred fifty-one pesos and sixty-five centavos (P1,651.65), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents I hereby definitely sell, cede and transfer in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fifth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-described
130 parcel of land, free of all charges and encumbrances, and that I hold myself responsible to the said company for any claim which may be presented against the same, and I hold myself obligated to cancel and pay any mortgage or charge against the said property which was imposed thereon prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if I fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) DEOGRACIAS MALIGALIG.

Signed in the presence of

(Sgd.) JACINTO ALLAREY.

" FILEMON PEREZ.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, A. D., personally appeared before me Don Deogracias Maligalig, whom I certify of my own knowlege to be the person who exe-

cuted the foregoing instrument and ratified it as being his own free will and deed. He exhibited his cedula No. F1231020, issued on April 25, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year abovementioned.

——— ———,
*Notary Public.*

131 EXHIBIT Z-5.

*Deed of Sale.*

Know all men by these presents: That I, Simeon Perez, of age, married, a resident of the municipality of Lucena, Province of Tayabas, Philippine Islands, having the necessary legal capacity to make this contract, freely and spontaneously set forth and declare:

First. That in the sitio called Cotta, municipality of Lucena, Tayabas, I am the owner in fee simple of the following property:

"A parcel of land measuring 3,497 square meters, bounded on the north partly by my own land and partly by that of Romana Velasquez; on the south by the Lucena Station and in part by the land of Melecio Allarey; on the east by the property of Deogracias Maligalig; and on the west, by a road, Marked on the plan as No. 21-*b*."

Second. That the said property is at present free from all charges and encumbrances.

Third. That the Manila Railroad Company desires to occupy the said property for the extension of its line from Lucena to Lanao.

Fourth. That in consideration of the sum of seven thousand nine hundred forty-three pesos and seventy centavos (P7,943.70), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents I hereby definitely sell, cede and transfer in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land, including the damages for the transfer of the storehouse appraised at P600.00, according to the report of the committee of appraisal.

132 Fifth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-described parcel of land, free of all charges and encumbrances, and that I hold myself responsible to the said company for any claims which may be presented against the same, and I hold myself obligated to cancel and pay any mortgage or charge against the said property which was imposed thereon prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if I fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) SIMEON PEREZ.

Signed in the presence of

(Sgd.) DEOGRACIAS MALIGALIG.

" JACINTO ALLAREY.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, A. D., personally appeared before me Don Simeon Perez, whom I certify of my own knowledge to be the person who executed the foregoing instrument and ratified it as being his own free will and deed. He exhibited his cedula No. F. 1,228,681, issued on January 20, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above-mentioned.

____ ____,
*Notary Public.*

133 EXHIBIT Z-6.

*Deed of Sale.*

Know all men by these presents: That I, Simeon Perez, of age, married, a resident of the municipality of Lucena, Province of Tayabas, Philippine Islands, having the necessary legal capacity to make this contract, freely and spontaneously set forth and declare:

First. That in the sitio called Cotta, municipality of Lucena, Tayabas, I am the owner in fee simple of the following property:

"A parcel of land measuring 5,250 square meters, bounded on the north by land of Eustaquio Lucena; on the south by my own property; on the east by a creek and land of Melecio Alvarez; and on the west by a road. Marked on the plan as No. 21-a."

Second. That the said property is at present free from all charges and encumbrances.

Third. That the Manila Railroad Company desires to occupy the said property for the extension of its line from Lucena to Lanao.

Fourth. That in consideration of the sum of eleven thousand twenty-five pesos (P11,025.00), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents I hereby definitely sell, cede and transfer in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fifth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-de-

134 scribed parcel of land, free of all charges and encumbrances, and that I hold myself responsible to the said company for any claim which may be presented against the same, and I hold myself obligated to cancel and pay any mortgage or charge against the said property which was imposed thereon prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if I fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) SIMEON PEREZ.

Signed in the presence of
(Sgd.) DEOGRACIAS MALIGALIG.
" JACINTO ALLAREY.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, A. D., personally appeared before me Don Simeon Perez, whom I certify of my own knowledge to be the person who executed the foregoing instrument and ratified it as being his own free will and deed. He exhibited his cedula No. F. 1,228,681, issued on January 20, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above-mentioned.

____ ____,
*Notary Public.*

135 EXHIBIT Z-7.

*Deed of Sale.*

Know all men by these presents, that I, Jacinto Allarey, of age, single, a resident of the municipality of Lucena, Tayabas, in my capacity of special attorney in fact of Melecio Allarey, also of age, a widower and resident of the municipality of Lucena, Tayabas, having the necessary legal capacity for the execution of this instrument, freely and spontaneously set forth and declare:

First. That my principal, Melecio Allarey, is the owner in fee simple and is in the possession of the following parcel of land:

"A parcel of land measuring 35 square meters, bounded on the north by land of Romana Velasquez; on the east by that of Deogracias Maligalig; on the south and west by lands of my principal. This land is situated in the barrio of Cotta, Lucena, Tayabas."

Second. That the said property is at present free from all charges and encumbrances, and that the Manila Railroad Company desires

to occupy the said property for the extension of its line from Lucena to Lanao.

Third. That in consideration of the sum of thirty-six pesos and seventy-five centavos (P36.75), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents, in the name and representation of my principal, Melecio Allarey, I definitely sell, cede and transfer in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fourth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-
136 described parcel of land, free of all charges and encumbrances, and that my principal remains responsible to the said company for any claim which may be presented against the same, and my principal is obligated to cancel and pay any mortgage or charge against the said property which was imposed therein prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if my principal fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) JACINTO ALLAREY.

Signed in the presence of

(Sgd.) FILEMON PEREZ.

" DEOGRACIAS MALIGALIG.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, personally appeared before me Mr. Jacinto Allarey, in his capacity of special attorney in fact of Mr. Melecio Allarey, who assured me that his powers had not been revoked, and whom I certify to be the person who executed the foregoing deed of sale and ratified the same as being an act of his own free will and deed and that of his principal. He exhibited his cedula No. F. 693,643, issued on the 28th of June, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above-mentioned.

____ ____,
*Notary Public.*

137 EXHIBIT Z-8.

*Deed of Sale.*

Know all men by these presents: that I, Jacinto Allarey, of age, single, a resident of the municipality of Lucena, Tayabas, in my

capacity of special attorney in fact of Melecio Allarey, also of age, a widower and resident of the municipality of Lucena, Tayabas, having the necessary legal capacity for the execution of this instrument, freely and spontaneously set forth and declare:

First. That my principal, Melecio Allarey, is the owner in fee simple and is in the possession of the following parcel of land:

"A parcel of land measuring 49 square meters, bounded on the north by lands of Romana Velasquez and of Deogracias Maligalig; on the south by my own property; on the east, by land of Deogracias Maligalig; and on the west, by land of Romana Velasquez and my own property. This land is situated in the barrio of Cotta, Lucena, Tayabas.

Second. That the said property is at present free from all charges and encumbrances, and that the Manila Railroad Company desires to occupy the said property for the extension of its line from Lucena to Lanao.

Third. That in consideration of the sum of fifty-one pesos and forty-five centavos (P51.45), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents, in the name and representation of my principal, Melecio Allarey, I definitely sell, cede and transfer in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fourth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-described parcel of land, free of all charges and encumbrances,
138 and that my principal remains responsible to the said company for any claim which may be presented against the same, and my principal is obligated to cancel and pay any mortgage or charge against the said property which was imposed therein prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if my principal fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) JACINTO ALLAREY.

Signed in the presence of
(Sgd.) FILEMON PEREZ.
" DEOGRACIAS MALIGALIG.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, personally appeared before me Mr. Jacinto Allarey, in his capacity of special attorney in fact of Mr. Melecio Allarey, who assured me that his powers had not been revoked, and whom I certify to be the person who executed the foregoing deed of sale and ratified

the same as being an act of his own free will and deed and that of his principal. He exhibited his cedula No. F. 693643, issued on the 28th of June, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above-mentioned.

——— ———,
*Notary Public.*

139 EXHIBIT Z-9.

*Deed of Sale.*

Know all men by these presents: that I, Jacinto Allarey, of age, single, a resident of the municipality of Lucena, Tayabas, in my capacity of special attorney in fact of Melecio Allarey, also of age, a widower and resident of the municipality of Lucena, Tayabas, having the necessary legal capacity for the execution of this instrument, freely and spontaneously set forth and declare:

First. That my principal, Melecio Allarey, is the owner in fee simple and is in the possession of the following parcel of land:

"A parcel of land measuring 1,839 (?) square meters, bounded on the north, south and *west* by my own lands; on the west by those of Simeon Perez and Romana Velasquez. This land is situated in the barrio of Cotta, Lucena, Tayabas."

Second. That the said property is at present free from all charges and encumbrances, and that the Manila Railroad Company desires to occupy the said property for the extension of its line from Lucena to Lanao.

Third. That in consideration of the sum of one thousand nine hundred twenty-three pesos (P1,923.00), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents, in the name and representation of my principal, Melecio Allarey, I definitely sell, cede and transfer in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fourth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-described parcel of land, free of all charges and encumbrances,
140 and that my principal remains responsible to the said company for any claim which may be presented against the same, and my principal is obligated to cancel and pay any mortgage or charge against the said property which was imposed therein prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if my principal fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) JACINTO ALLAREY.

Signed in the presence of
(Sgd.) FILEMON PEREZ.
" DEOGRACIAS MALIGALIG.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, personally appeared before me Mr. Jacinto Allarey, in his capacity of special attorney in fact of Mr. Melecio Allarey, who assured me that his powers had not been revoked, and whom I certify to be the person who executed the foregoing deed of sale and ratified the same as being an act of his own free will and deed and that of his principal. He exhibited his cedula No. F. 693,643, issued on the 28th of June, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above-mentioned.

____ ____,
*Notary Public.*

141 EXHIBIT Z-10.

*Deed of Sale.*

Know all men by these presents, That I, Jacinto Allarey, of age, single, a resident of the municipality of Lucena, Tayabas, in my capacity of special attorney in fact of Melecio Allarey, also of age, a widower and resident of the Municipality of Lucena, Tayabas, having the necessary legal capacity for the execution of this instrument, freely and spontaneously set forth and declare:

First. That my principal, Melecio Allarey, is the owner in fee simple and is in the possession of the following parcel of land:

"A parcel of land measuring 865 square meters, bounded on the north, south and west by lands belonging to my principal; on the east by that of Deogracias Maligalig. This land is situated in the barrio of Cotta, Lucena, Tayabas."

Second. That the said property is at present free from all charges and encumbrances, and that the Manila Railroad Company desires to occupy the said property for the extension of its line from Lucena to Lanao.

Third. That in consideration of the sum of nine hundred five pesos and ten centavos (P905.10), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents, in the name and representation of my principal, Melecio Allarey, I definitely sell, cede and transfer

in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fourth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-
142 described parcel of land, free of all charges and encumbrances, and that my principal remains responsible to the said company for any claim which may be presented against the same, and my principal is obligated to cancel and pay any mortgage or charge against the said property which was imposed therein prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if my principal fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila this 1st day of July, 1913.

(Sgd.) JACINTO ALLAREY.

Signed in the presence of

(Sgd.) FILEMON PEREZ.

" DEOGRACIAS MALIGALIG.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, personally appeared before me Mr. Jacinto Allarey, in his capacity of special attorney in fact of Mr. Melecio Allarey, who assured me that his powers had not been revoked, and whom I certify to be the person who executed the foregoing deed of sale and ratified the same as being an act of his own free will and deed and that of his principal. He exhibited his cedula No. F. 693.643, issued on the 28th of June, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year above-mentioned.

____ ____,
*Notary Public.*

143 EXHIBIT Z-11.

*Deed of Sale.*

Know all men by these presents: That I, Jacinto Allarey, of age, single, a resident of the municipality of Lucena, Tayabas, in my capacity of special attorney in fact of Melecio Allarey, also of age, a widower and resident of the municipality of Lucena, Tayabas, having the necessary legal capacity for the execution of this instrument, freely and spontaneously set forth and declare:

First. That my principal, Melecio Allarey, is the owner in fee simple and is in the possession of the following parcel of land:

"A parcel of land measuring 119 square meters, bounded on the north, south and west by lands belonging to my principal; on the east, by that of Deogracias Maligalig. This land is situated in the barrio of Cotta, Lucena, Tayabas."

Second. That the said property is at present free from all charges and encumbrances, and that the Manila Railroad Company desires to occupy the said property for the extension of its line from Lucena to Lanao.

Third. That in consideration of the sum of one hundred twenty-four pesos and ninety-five centavos (P124.95), Philippine currency, here in hand paid to me by the Tayabas Land Co., through its representative Mr. Calixto Berbary, by these presents, in the name and representation of my principal, Melecio Allarey, I definitely sell cede and transfer in full dominion to the Tayabas Land Co., the property above described in this instrument, together with each and all of the improvements existing on the said parcel of land.

Fourth. It is hereby covenanted and agreed that the Tayabas Land Co., is henceforward the absolute owner of the above-described
144 parcel of land, free of all charges and encumbrances, and that my principal remains responsible to the said company for any claim which may be presented against the same, and my principal is obligated to cancel and pay any mortgage or charge against the said property which was imposed therein prior to the date of the execution of this instrument and to indemnify the vendee company for any loss or damage which it may suffer if my principal fail to do so in due time.

In testimony whereof I sign this instrument in duplicate in Manila, this 1st day of July, 1913.

(Sgd.) JACINTO ALLAREY.

Signed in the presence of

(Sgd.) FILEMON PEREZ.

" DEOGRACIAS MALIGALIG.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 1st day of July, 1913, personally appeared before me Mr. Jacinto Allarey, in his capacity of special attorney in fa-t of Mr. Malecio Allarey, who assured me that his powers had not been revoked, and whom I certify to be the person who executed the foregoing deed of sale and ratified the same as being an act of his own free will and deed and that of his principal. He exhibited his cedula No. F. 693,643, issued on the 28th of June, 1913, in Lucena, Tayabas.

In witness whereof I affix my signature and rubric hereto together with the official seal of my office on the day, month and year abovementioned.

____ ____,
*Notary Public.*

145 EXHIBIT Z-12.

Know all men by these presents, That I, Don Francisco Ycasiano y Bello, of age, married, a land owner and a resident of this capital city of Manila, set forth and declare:

I. That I am the owner in fee simple of a parcel of land, situated in the barrio of Cotta, municipality of Lucena, Tayabas, the description of which is as follows:

"A parcel of land measuring 16,094 square meters, parcel No. 21 on the plan, bounded on the north and south by Doña Romana Velasquez; on the east, by Melecio Allarey; and on the west, by the street leading to Cotta."

II. That I acquired the foregoing parcel of land from Don Filemon Perez by purchase, through an instrument that was signed by the said vendor in the presence of the witnesses Don Juan Carmona and Don Exequiel Ampil on the 16th of August, 1912.

III. That in consideration of the sum of eighteen thousand pesos (P18,000), Philippine currency, herein paid me by check No. 12079, of the same value, drawn on the Bank of the Philippine Islands by Mr. Calixto Berbari, manager of the Tayabas Land Co., I hereby make known that I sell, cede, and transfer to the said company, definitely and in perpetuity, the property and all of my rights, title and interests in and to the said parcel of land described in the first paragraph of this document, and the said company may henceforth freely dispose of the same as it pleases.

In testimony whereof I sign these presents on this 26th day of May, 1913, in Manila, Philippine Islands.

(Sgd.) FRANCISCO YCASIANO.

Signed in the presence of

(Sgd.) MACARIO A. CERVANDO.

" PAULINO P. BOBADILLA.

No. 71, p. 27, register.

146 UNITED STATES OF AMERICA,
*Philippine Islands:*

In the city of Manila, Philippine Islands, this 26th day of May, 1913, before me personally appeared Don Francisco Ycasiano y Bello, whom I certify of my own knowledge to be the person who executed the foregoing deed of sale of a parcel of land measuring 16,094 square meters, parcel No. 21 of the plan, bounded on the north and south by Doña Romana Velasquez; on the east by Melecio Allarey; and on the west by the road leading to Cotta, in favor of the Tayabas Land Co., for the sum of eighteen thousand pesos, Philippine currency, and ratified the same as being an act of his own free will and deed. The vendor, Don Francisco Ycasiano y Bello ex-

hibited his cedula No. F-1,371,133, issued by the municipal treasurer of Baliuag, Bulacan, on the 16th day of April, 1913.

Before me,

(Sgd.) VICENTE MIRANDA,
*Notary Public.*

My commission expires December 31, 1914.

Seal and stamp.

147 DEFENDANTS' EXHIBIT 2.

(Parcel 21-*b*.)

I, the undersigned, Romana Velasquez, widow of Enriquez, of age and a resident of this town of Lucena, Province of Tayabas, P. I., by these presents set forth and declare:

That in consideration of the sum of P2,500.00, Phil. cy., in hand paid to me by the spouses Don Simeon Perez and his wife Doña Victoria Enriquez de Perez, also residents of this town of Lucena, Tayabas, P. I., I hereby sell, cede and transfer to the said persons, their heirs or assigns, the three parcels of unirrigated land belonging to me situated in the said town of Lucena, Tayabas, P. I., within the following metes and bounds:

"First parcel. A piece of unirrigated land measuring on the north, 792 feet, English measurement; on the south, 776 feet, English measurement; on the east, 317 feet, English measurement; and on the west, 278 feet, English measurement. It is bounded on the north by the land on which is erected the provincial building of this province; on the south, by land of the railroad company; on the east, by land bought by me from Señora Odona, the widow of Enriquez; and on the west by the main road of this town leading to the coast.

"Second parcel. A piece of land, also unirrigated, measuring from north to south 30 meters, and from east to west, 43 meters. It is bounded as follows: On the north, by the land of the railroad company; on the south, by my own unirrigated land; on the east by a creek that is just forming, on the other side of which is the remainder of my land in that direction (the third parcel of this deed of sale) and unirrigated land belonging to Mrs. Hilaria Enriquez; and on the west, by the main road of Lucena which leads to the coast.

148 "Third parcel. Also unirrigated land which has a capacity of three gantas of rice seed, more or less. It is bounded on the north by the land of the railroad company; on the south by unirrigated land of Mrs. Hilaria Enriquez; on the east by dry land of Mr. Melecio Allarey; and on the west by the creek already referred to and my own land which was also sold and is that which is referred to in the second parcel of this instrument."

I also declare, agree and subscribe with the referred to spouses, my son-in-law Mr. Simeon Perez, and his wife, Victoria Enriquez

de Perez, with their heirs and assigns, that I am the only and legitimate owner of the lands herein referred to, and I undertake to defend their legitimate rights against whomsoever may present himself in opposition thereto.

In witness whereof I sign these present- in the presence of two witnesses, in Lucena, Tayabas, P. I., this 9th day of November, 1912.

(Sgd.) ROMANA VELASQUEZ.

In the presence of:
(Sgd.) HONORIO LANUZA.
" LEANDRO DE VERA.

UNITED STATES OF AMERICA,
*Philippine Islands,*
*Municipality of Lucena, Tayabas, P. I.:*

Before me, Crispo Ella, notary public in the Province of Tayabas, appeared Doña Romana Velasquez, whom I certify to be personally known to me as the person who executed the foregoing instrument and ratified the same as being an act of her own free will and deed.

149 Doña Romana Velasquez did not exhibit a cedula by reason of her sex.

Lucena, November 18, 1912.
(Sgd.) CRISPO ELLA.

My commission expires December 31, 1912.

Register No. 444.
Page 30.
Seal and stamps.

150 DEFENDANTS' EXHIBIT 3.

(Parcel 21.)

*Deed of Sale.*

I, the undersigned, Romana Velasquez, of age, a widow and resident of this municipality of Lucena, Province of Tayabas, P. I., in consideration of the sum of P6,500.00 to me in hand paid by Mr. Filemon Perez, married, of age, and a resident of this same municipality of Lucena, Province of Tayabas, P. I., set forth and declare by these presents that I have ceded and transferred in absolute sale to the said Filemon Perez, his heirs and assigns, a parcel of urban land, with the crops thereon, measuring 16,094 square meters, which crosses the railroad line, the metes and bounds whereof are as follows: Bounded on the Ylaya side by land of the said Doña Romana Velasquez; on the east by that of Mr. Melécio Allarey; on the lower part

by land of Mrs. Hilaria Enriquez and by land of the said vendor; and on the west by Calle Gardener; situated at the side below the provincial government property and provincial jail, within the limits of this town of Lucena.

I furthermore declare that I have covenanted and agreed with the said Filemon Perez that from now henceforth, in consideration of the amount paid me as above set forth in this document, he shall have the absolute dominion and ownership of the said land, free of all charge and encumbrance, and shall enjoy the quiet possession thereof as against any person who might assert any right thereto, and also that he may avail himself of the right to sell or transfer the land to any other poerson.

I also declare that I will answer to the said Filemon Perez, his heirs or assigns, now and forever, for the said property against any
151 persons asserting any rights thereto.

In witness whereof I sign these presents this 21st day of July, 1912, here in Lucena, Tayabas, P. I.

(Sgd.) ROMANA VELASQUEZ.

Signed in the presence of:

(Sgd.) HONORIO LANUZA.
" TIMOTEO NARANJO.

UNITED STATES OF AMERICA,
*Philippine Islands:*

Personally appeared before me Doña Romana Velasquez, whom I certify of my own knowledge to be the person who executed the foregoing instrument and ratified the same as an act of her own free will and deed.

She did not exhibit a cedula by reason of her sex.

Lucena, Tayabas, July 21, 1912.

Before me,

(Sgd.) CRISPO ELLA,
*Notary Public.*

My commission expires December 31, 1912.

Register No. 308.
Page No. 100.
Seal and stamps.

152 EXHIBIT No. 2.

Provincial Government of Tayabas.

Office of the Fiscal.

Lucena, P. I.

I, Crispin Oben, provincial fiscal, ex-officio register of deeds, of the Province of Tayabas, certify that in Book No. 9 belonging to

the municipal government of Lucena, at page 241, there is to be found an entry which is literally as follows:

Property No. 804. First inscription; composition; rural; inherited cultivated property, situated in the barrio of Cota, within the municipality of Lucena, bounded on the north by dry rice land belonging to Doña Juana Abastillas, Don (paper worn through at this place) chan and coconut lands of Don Jorge Zaballero; on the east by coconut lands of Doña Manuela Abastillas, Don Feliciano Abastillas, Don Fabio Edaño, Don Natalio Abatdilla, Don Vicente Edaño, Don Jorge Zabaliero, Don Nicolas N. and the River Dumacaa; on the south by dry rice lands and coconut lands belonging to Doña Ynocenta Rañola; and on the west by a creek and dry rice lands belonging to Don Melecio Allarey; it measures fifteen hectares, six ares and eighty centares, and is taxed as uncultivated land at sixty pesos and twenty-seven centimos, as is stated in the title presented; together with its improvements its value is assessed at two thousand pesos, as is evidenced by the private document which, signed by the undersigned, is registered with the number nine hundred and fifty in the proper file. No charge or encumbrance is known. Don Deogracias Maligalig y Abastillas, married, thirty-five years of age, born in this town, a laborer and resident of Lucena, applied for composition with the State of this property and two others
153 which are inscribed at the place indicated in the margin hereof, and the proper papers having been prepared the board on composition of lands, by a resolution dated the thirtieth of November last year, and in accordance with the Royal Decree of the thirty-first of August of one thousand eight hundred and eighty-eight, awarded gratuitous ownership of the said property to the petitioner. To this end Don Mariano de Rojas, Chief of this Province, issued to him the corresponding title on the ninth of May last, which was registered at folios nine and ten of the second book of the General Register by the secretary of the said board. In virtue thereof the said Don Deogracias Maligalig y Abastillas inscribes his title of ownership by composition with the State of the property of this number. All the foregoing appears in the said title which bears a dry stamp of the General Inspection of Forests and is signed by the Inspector of that branch, and was presented at this office at the hour of eight forty a. m. on the seventh instant, as appears in the entry of the presentation number five hundred sixty eight, at page ninety-two, day-book number three. And whereas all the foregoing agrees with the documents and the entry to which I refer, I issue these presents in Tayabas on the tenth day of October, one thousand eight hundred and ninety-five.—Damian Martinez Enciso.—Fees, six pesos, No. 7, arancel.—There is a marginal note which says: the other two properties included in the same title are inscribed at folios 244 and 247, properties Nos. 805 and 806, first inscriptions of this book. Tayabas, October 10, 1895.—Martinez Enciso.

The foregoing is a true and correct copy of an entry that is to be found in the page and book with the number referred to and

154 to which I refer. And by virtue of an order of the Honorable Court of First Instance dated the 20th of November, 1913, issue these presents in Lucena, August 27, 1914.

(Sgd.) CRISPIN OBEN,
*Provincial Fiscal, ex-Officio Register of Deeds.*

155 The undersigned, Clerk of the Supreme Court of the Philippine Islands further certifies:

That the record in the above entitled case was received in this Supreme Court on August 31, 1914, and was docketed under No. 10278.

That the bill of exceptions was duly printed on September 1914 and copies were delivered to the interested parties on the same date.

That the brief of the plaintiff as appellant was filed in this court on November 16, 1914; that of the defendant as appellant on November 27, 1914, and the brief of defendants as appellees on November 30, 1914. On August 4, 1915, plaintiff filed its brief as appellee.

That the case was submitted to the Supreme Court on January 12, 1915, and on November 23, 1915, the following decision was filed:

156 UNITED STATES OF AMERICA,
*Philippine Islands:*

In the Supreme Court of the Philippine Islands, November 23, 1915.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

ROMANA VELASQUEZ, MELECIO ALLAREY, DEOGRACIAS MALIGALIG, Defendants and Appellants,

*Decision.*

TRENT, *J.*:

This action was instituted by the Manila Railroad Company for the purpose of expropriating twelve small parcels of land for a railroad station site at Lucena, Province of Tayabas.

The original defendants were Romana Velasquez, Melecio Allarey, and Deogracias Maligalig. After the filing of the complaint Simeon Perez, Filemon Perez, and Francisco Icasiano, having bought Romana Velasquez' interest, were included as defendants. The commissioners fixed the value of the twelve parcels at P81,412.75,
157 and awarded P600 to Simeon Perez as damages for the removal of an uncompleted camarín. Upon hearing, the commissioners' report was approved and the plaintiff directed to pay to the "Tayabas Land Company" the total amount awarded, with interest and costs. The plaintiff company alleges that that amount is

grossly excessive, pointing out that the land has never been used except for rice culture.

Upon this appeal we are asked to review the evidence and reduce the appraised value of the condemned land in accordance with our findings rendering judgment accordingly. Has this court, under the law, authority to take such action? And along with this question it must be decided whether the Courts of First Instance have such power over the reports of commissioners. Section 246 of the Code of Civil Procedure reads:

"Action of Court upon Commissioners' Report.—Upon the filing of such report in court, the court shall, upon hearing, accept the same and render judgment in accordance therewith; or for cause shown, it may recommit the report to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part, and may make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken; and the judgment shall require payment of the sum awarded as provided in the next section, before the plaintiff can enter upon
158 the ground and appropriate it to the public use."

From this section it clearly appears that the report of the commissioners on the value of the condemned land is not final. The judgment of the court is necessary to give effect to their estimated valuation. (Crawford vs. Valley R. R. Co., 25 Grat., 467.) Nor is the report of the commissioners conclusive, under any circumstances, so that the judgment of the court is a mere detail or formality requisite to the proceedings. The judgment of the court on the question of the value of the land sought to be condemned is rendered after a consideration of the evidence sumbitted to the commissioners, their report, and the exceptions thereto submitted upon the hearing of the report. By this judgment the court may accept the commissioners' report unreservedly; it may return the report for additional facts; or it may set the report aside and appoint new commissioners; or it may accept the report in part or reject it in part, and "make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken." Any one of these methods of disposing of the report is available to and may be adopted by the court according as they are deemed suited to secure to the plaintiff the necessary property and to the defendant just compensation therefor. But can the latter method produce a different result in reference to any part of the report from that recommended by the commissioners?

159 Section 246 expressly authorizes the court to "accept the report in part and reject it in part." If this phrase stood alone, it might be said that the court is only empowered to accept as a whole certain parts of the report and reject as a whole other parts. That is, if the commissioners fixed the value of the land taken at P5,000, the improvements at P1.000, and the consequential damages at P500, the court could accept the report in full as to any

one item and reject it as to any other item, but could not accept or reject a part of the report in such a way as to change any one of the amounts. But the court is also empowered "to make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken." The court is hereby expressly authorized to issue such orders and render such judgment as will produce these results. If individual items which make up the total amount of the award in the commissioners' report could only be accepted or rejected in their entirety, it would be necessary return the case, so far as the rejected portions of the report were concerned, for further consideration before the same or new commissioners, and the court could not make a "final order and judgment" in the cause until the rejected portions of the report had been rereported to it. Thus, in order to give the quotation from 246 its proper meaning, it is obvious that the court may, in its discretion correct the commissioners' report in any manner deemed suit-
160 able to the occasion so that final judgment may be rendered and thus end the litigation. The "final order and judgment" are reviewable by this court by means of a bill of exceptions in the same way as any other "action." Section 496 provides that the Supreme Court may, in the exercise of its appellate jurisdiction, affirm, reverse, or modify any final judgment, order, or decree of the Court of First Instance, and section 497, as amended by Act No. 1596, provides that if the excepting party filed a motion in the Court of First Instance for a new trial upon the ground that the evidence was insufficient to justify the decision and the judge overruled such motion and due exception was taken to his ruling, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence and render such final judgment as justice and equity may require. So it is clear from these provisions that this court, in those cases where the right of eminent domain has been exercised and where the provisions of the above section have been complied with, may examine the testimony and decide the case by a preponderance of the evidence; or, in other words, retry the case upon the merits and render such order or judgment as justice and equity may require. The result is, that, in our opinion, there is ample authority in the statute to authorize the courts to change or modify the report of the commissioners by increasing or decreasing the amount of the award, if the facts of the case will justify such change or modification. As it has been
161 suggested that this conclusion is in conflict with some of the former holdings of this court upon the same question, it might be well to briefly review the decisions to ascertain whether or not, as a matter of fact, such conflict exists.

In City of Manila vs. Tuason et al. (R. G. No. 3367, decided March 23, 1907, unreported), the Court of First Instance modified the report of the commissioners as to some of the items and confirmed it as to others. On appeal, the Supreme Court remanded the cause, apparently for the reason that the evidence taken by the commissioners and the lower court was not before it, and perhaps also be-

cause the commissioners adopted a wrong principle of assessing dam ges.

In Manila Railway Co. vs. Fabie (17 Phil. Rep., 206) the majority report of the commissioners appraised the land at P56,337.18, while a dissenting commissioner estimated it at P27,415.92. The Court of First Instance, after taking additional evidence upon the consequential benefits to the remainder of defendants' land by the construction of the railroad, and also as to the rental value of various pieces of land in the locality, fixed the value of the land at the sum estimated by the dissenting commissioner. The defendants appealed to this court. This court remarked that the only evidence tending to support the majority report of the commissioners consisted of deeds of transfer of real estate between parties in that community showing the prices paid by the vendees in such con-
162 veyances. It was held that without its being shown that such transfers had been made in the ordinary course of business and competition, and that the parties therein stated were not fictitious, such deeds were incompetent as evidence of the value of the condemned land. As to the action of the court in fixing the price of the land at P27,415.92, the court said:

"Conceding, without deciding, that he also had the right to formulate an opinion of his own as to the value of the land in question, nevertheless, if he formulate such an opinion, he must base it upon competent evidence. The difficulty with the case is that it affirmatively appears from the record on appeal that there is an entire absence of competent evidence to support the finding either of the commissioners or of the court, even if the court had a right to make a finding of his own at all under the circumstances."

In Manila Railroad Co. vs. Attorney-General (22 Phil. Rep., 192) the only question raised was the value of certain improvements on the condemned portion of a hacienda, such improvements consisting mainly of plants and trees and belonging to a lessee of the premises. The total damages claimed were P24,126.50. The majority report of the commission allowed P19,478, which amount was reduced by the Court of First Instance to P16,778. The plaintiff company, upon appeal to this court, alleged that the damages allowed were grossly excessive and that the amount allowed by the commissioners should have been reduced by at least P17,000;
163 while the defendant urged that the damages as shown by the record were much greater than those allowed, either by the commissioners or by the court. In disposing of the case this court said:

"The only ground upon which the plaintiff company bases its contention that the valuations are excessive is the minority report of one of the commissioners. The values assigned to some of the improvements may be excessive but we are not prepared to say that such is the case. Certainly there is no evidence in the record which would justify us in holding these values to be grossly excessive. The commissioners in their report go into rather minute detail as to the reasons for the conclusions reached and the valuations fixed

for the various items included therein. There was sufficient evidence before the commissioners to support the valuations fixed by them except those later modified by the court below. The trial court was of the opinion that the price of P2 each which was fixed for the orange trees (naranjitos) was excessive, and this was reduced to P1.50 for each tree; this on the ground that the evidence discloses that these trees were comparatively young at the time of the expropriation, and that the value fixed by the majority report of the commissioners was that of full-grown or nearly full-grown trees. We are of opinion that this reduction was just and reasonable. Aside from the evidence taken into consideration by the trial judge we find no evidence in the record in support of the contention of the railroad plaintiff that the valuations fixed in the majority report of the commissioners and by the trial court are grossly excessive, and plaintiff company having wholly failed to offer evidence in support of its allegations in this regard when the opportunity so to do was provided in accordance with law, it has no standing in this court to demand a new trial based on its unsupported allegations of grossly excessive valuation of the property by the commissioners and the court below."

This court affirmed the finding of damages made by the trial court with the exception of an item for damages caused by fire to improvements on lands adjoining those condemned, which was held not to be a proper mattter to be considered in condemnation proceedings. The court here approved of the action of the Court of First Instance in reducing the amount of damages fixed by the commissioners as to the value of the young orange trees on the strength of the evidence of record.

In Manila Railroad Company vs. Caligsihan (R. G. No. 7932, decided March 25, 1913, unreported), it appears that the lower court approved in toto the report of the commissioners. On appeal, this Supreme Court reversed the lower court and remanded the case with orders to appoint new commissioners, saying:

"Under the evidence in this case the award is excessive. Section 246 of the Code of Civil Procedure giving to the court the power to 'make such final order and judgment as shall secure to the party the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken,' we exercise that right in this case for the purpose of preventing the defendants from obtaining that which would be more than 'just compensation' under all the evidence of the case."

"The judgment is reversed and the cause remanded, with instructions to the lower court to appoint a new commission and to proceed from that point de novo."

We will now examine the case (Philippine Railway Co. vs. Solon, 13 Phil. Rep., 34) relied upon to support the proposition that the courts should not interfere with the report of the commissioners to correct the amount of damages except in cases of gross error, showing prejudice or corruption.

In that case the property belonging to the appellant which the

company sought to appropriate was his interest as tenant in a tract of land belonging to the Government, together with a house standing thereon and other property belonging to him. He asked that he be awarded for all the property taken P19,398.42. The commissioners allowed him P10,745.25. At the hearing had upon the report, the court reduced this amount and allowed the appellant P9,637.75. The commissioners took a large amount of evidence relative to the amount of damages. The testimony was conflicting as to the value of the house, two witnesses fixing it at over P12,000; another at over P14,000; one at P8,750; another at P6,250; and another at P7,050.95. The commissioners fixed the value
166 of the house alone at P9,500, and the court at P8,792.50. This court said:

"Nor do we decide whether, in a case where the damages awarded by the commissioners are grossly excessive or grossly insufficient, the court can, upon the same evidence presented before the commissioners, itself change the award. We restrict ourselves to deciding the precise question presented by this case, in which it is apparent that, in the opinion of the court below, the damages were not grossly excessive, for its own allowance was only P1,000 less than the amount allowed by the commissioners, and the question is, whether in such a case the court can substitute its own opinion upon the evidence presented before the commissioners for the opinion which the commissioners themselves formed, not only from that evidence but also from a view of the premises which by law they were required to make."

Referring to the manner in which the trial court arrived at its valuation of the various items, including the house, this court said:

"Without considering the correctness of the rule adopted by the court for determining the value of the property it is sufficient to say that the evidence before the commissioners as to the value of the property taken was contradictory and that their award was not palpably excessive or inadequate. Under such circumstances, we are of the opinion that the court had no right to interfere with
167 it."

From the foregoing it is clear that (1) the testimony was conflicting; (2) that the award as allowed by the commissioners was well within the amounts fixed by the witnesses; and (3) that the award was not grossly excessive. That it was not grossly excessive is shown by the difference between the amount fixed by the commissioners and that fixed by the court, this difference being P1,117.50, a reduction of a little over 10 per cent.

In City of Manila vs. Estrada (25 Phil. Rep., 208), the city sought to expropriate an entire parcel of land with its improvements for use in connection with a public market. The commissioners, after viewing the premises and receiving evidence, being unable to agree, submitted two reports to the court. In the majority report the value of the land was fixed at P20 per square meter and in the minority report at P10. The Court of First Instance fixed the value at P15 per square meter. Upon appeal this court, after reviewing the evidence, held that P10 per square meter was a just compen-

sation for the land taken and rendered judgment accordingly, saying:

"After a careful examination of the entire record in this case and the law applicable to the questions raised therein, we are of the opinion that P10 per square meter is a just compensation for the land taken."

From the above review of the cases it will be seen that this court has not only not decided that the courts cannot interfere with
168 the report of the commissioners unless prejudice or fraud has been shown, but the decisions, aside from the case of the City of Manila vs. Estrada, tend to show the contrary; that is, an award which is grossly excessive or grossly insufficient in the opinion of the court can be increased or decreased, although there be nothing which tends to indicate prejudice or fraud on the part of the commissioners. The case of The City of Manila vs. Estrada is direct authority supporting the conclusions which we have reached in the case at bar. And we are not without authority outside of this jurisdiction which supports the view we have taken in the case under consideration. In Morgan's Louisiana & Texas R. R. Co. vs. Barton (51 La. Ann., 1338), the court, in considering a procedural law similar to our own, stated:

"On the question of the value of the land, 8.34 acres, the commissioners have allowed $2,500, or $300 per acre. The defendant has put in the record the testimony of witnesses claimed to support the allowance. Without disregarding this testimony, it is sufficient to say that the opinions of the witnesses do not seem to be based on any fact calculated to show the value of the land. * * * On the other hand the plaintiff has placed before us the titles of defendant of recent date showing the price paid by him (the defendant) for the entire body of land of which the 8 acres are part; the acts of sale of land in the same neighborhood, and of the same quality; the assessment of defendant's property, and other testimony on this issue of value. * * * Giving all possible weight, or
169 rather restricting the testimony of the plaintiffs' witnesses to its due influence, and giving, we think, necessary effect to the acts by which defendant purchased, the acts of sale of other land, the assessment of value, with due allowance for under assessment, and the other testimony of record, we reach the conclusion that the award gives two-thirds more than the value of the land. We fix the value of the land at $833.33."

See also T. & P. R. R. Co. vs. Southern Develop. Co. (52 La. Ann. 535), where the court held the appraisement too low and after discussing the evidence, increased the amount of the award accordingly. A similar case is Abney vs. Railroad Co. (105 La., 446). See also T. & P. R. R. Co. vs. Wilson (108 La., 1; 32 So., 173); and Louisiana Western R. Co. vs. Crossman's Heirs (111 La., 611; 35 So., 784), where the point is touched upon.

In Missouri the statute (1 Mo. Ann. Stat., sec. 1268) directs that "the court shall make such order therein as right and justice may require, and may order a new appraisement, upon good cause

shown." Owing to a constitutional restriction, this provision has been construed to apply only to damages and benefits resulting to landowners in consequence of proposed improvements, the cash value of property expropriated being an issue triable, at the instance of either party, by a jury subsequent to the findings of the commissioners. Subject to this restriction, however, it has been held that the above provision of law gives the court the right to in-
170 crease or decrease the amount awarded by the commissioners.

In the late case of Tarkio Drainage District vs. Richardson (237 Mo., 49) the court presents a lengthy review of its decisions on this subject.

The question now arises, when may the courts, with propriety, overrule the award of the commissioners in whole or in part, and substitute their own valuation of the condemned property? We shall consider this question in two ways: first, as one of procedure under section 246, above quoted; and second, as to the evidence which must appear in the record in order to justify such action.

From a mere reading of section 246 and the remarks just made, it should be clear that the court is permitted to act upon the commissioners' report in one of several ways, at its own discretion. The whole duty of the court in considering the commissioners' report is to satisfy itself that just compensation will be made to the defendant by its final judgment in the matter, and in order to fulfill its duty in this respect the court will be obliged to exercise its discretion in dealing with the report as the particular circumstances of the case may require. But generally speaking, when the commissioners' report cannot with justice be approved by the court, one of three or four circumstances will usually present itself, each of which has for its antidote one of the methods of dealing with the report placed at the disposal of the court by section 246. Thus, if it be successfully established that the commissioners refused to hear competent evidence material to the case, then all the evidence in the case
171 would not be before the court. The court could not, with reason, attempt to either approve or change the report, as it stood, for the reason that all the evidence of the case would not have been considered by the commissioners nor have been presented to the court; and the remedy would be to "recommit the report of the commissioners for further report of facts." Again, if improper conduct, fraud, or prejudice be charged against the commissioners, and this charge be sustained it would be safer to set aside the award thus vitiated and "appoint new commissioners" who could render a report not tainted by these things. But when the only error of the commissioners is that they have applied illegal principles to the evidence submitted to them; or that they have disregarded a clear preponderance of the evidence; or that they have used an improper rule of assessment in arriving at the amount of the award, then, in such a case, if the evidence be clear and convincing, the court should ordinarily be able, by the use of those correct legal principles which govern the case, to determine upon the amount which should be awarded without returning the report to the commissioners. When the matter stands in this light, it becomes the duty of the court to make "final

order and judgment" in which the proper award will be made and thus end the litigation between the parties.

Now, what evidence as to value must the record contain in order to justify the court in disregarding the valuation fixed upon the condemned property by the commissioners and substituting
172 therefor its own finding of value. It is almost a universal practice in the United States to submit the question of value in expropriation cases to a jury or commission, usually of local property owners, and one of the things they are specially instructed to do is to view or inspect the condemned property. The purpose of this view and the additional weight which should be given to the award of the appraisers because of the view are questions often discussed. After a careful examination of a number of adjudicated cases, we have concluded that the following cases, all agreeing in principle, correctly state the purpose of the view.

In Denver Co. vs. Howe (49 Colo., 256; 112 P., 779), it was said:

"The jury viewed the premises and were better able to judge of the number of acres in each, as well as other conditions affecting the land. The facts ascertained by the view of the premises are not in the record, whether they were regarded as so much additional evidence, or were used to better understand and apply the evidence adduced at the trial. Keeping in view the evidence relating to the special value of the building site, the value of improvements and of the ground, it will be found that the verdict is within and supported by the values as testified to, and these values, as fixed by the several witnesses, represented to each the market value, as conceded by appellants. The verdict is supported by the evidence of market value and on that ground would have to be sustained if the
173 matter complained of in the instruction had been entirely omitted."

In Gorgas vs. Railroad Co. (114 Pa., 1; 22 Atl., 715), it was said:

"A view may sometimes be of the highest importance, where there is a conflict of testimony. It may enable the jurors to see on which side the truth lies. And if the witnesses on the one side or the other have testified to a state of facts which exists only in their imagination, as to the locality of the property, the manner in which it is cut by the road, the character of the improvements, or any other physical fact bearing upon the case, they surely cannot be expected to ignore the evidence of their senses and give weight to testimony which their view shows to be false. * * * The true rule in such cases, is believed to be that the jury in estimating the damages shall consider the testimony as given by the witnesses, in connection with the facts as they appear upon the view; and upon the whole case, as thus presented, ascertain the difference between the market value of the property immediately before and immediately after the land was taken. This difference is the proper measure of damages."

In Close vs. Samm (27 Iowa, 503), subsequently approved in Guinn vs. Railway Co. (131 Iowa, 680, 683; 109 N. W., 209), it was said:

"The question then arises as to the purpose and intent of this statute. It seems to us that it was to enable the jury, by the view of

the premises or place, to better understand and comprehend
174 the testimony of the witnesses respecting the same, and thereby the more intelligently to apply the testimony to the issues on trial before them, and not to make them silent witnesses in the case, burdened with testimony unknown to both parties, and in respect to which no opportunity for cross-examination or correction of error, if any, could be afforded either party. If they are thus permitted to include their personal examination, how could a court ever properly set aside their verdict as being against the evidence, or even refuse to set it aside without knowing the facts ascertained by such personal examination by the jury? It is a general rule, certainly, if not universal, that the jury must base their verdict upon the evidence delivered to them in open court, and they may not take into consideration facts known to them personally, but outside of the evidence produced before them in court. If a party would avail himself of the facts known to a juror, he must have him sworn and examined as other witnesses."

In C. K. & W. R. Co. vs. Mouriquand (45 Kan., 170), the court approved of the practice of instructing the jury that their view of the premises was to be used in determining the value of conflicting testimony, saying:

"Had the jury disregarded all the sworn evidence, and returned a verdict upon their own view of the premises, then it might be said that the evidence which the jurors acquired from making the view had been elevated to the character of exclusive and predominating evidence. This is not allowable. The evidence of the wit-
175 nesses introduced in the court on the part of the landowner, supports fully the verdict. If the verdict was not supported by substantial testimony given by witnesses sworn upon the trial, we would set it aside, but as the jury only took into consideration the result of their view of the premises, in connection with the sworn evidence produced before them, to determine between conflicting evidence, the instruction was not so erroneous as to require a new trial."

In Postal Telegraph-Cable Co. vs. Peyton (124 Ga., 746; 52 S. E., 803; 3 L. R. A. N. S., 333), it was said:

"A jury cannot be left to roam without any evidence in the ascertainment and assessment of damages. The damages which the law allows to be assessed in favor of a landowner whose property has been taken or damaged under the right of eminent domain, are purely compensatory. The land actually appropriated by the telegraph company amounted to only a fraction of an acre; and while it appeared that the construction and maintenance of the telegraph line would cause consequential damages to the plaintiff, no proof was offered from which any fair and reasonable estimate of the amount of damages thereby sustained could be made. The jury should have been supplied with the data necessary in arriving at such an estimate. In the absence of this essential proof, a verdict many times in excess of the highest proved value of the land actually taken must necessarily be deemed excessive. Judgment reversed."

In New York, where the question has doubtless been raised more

often than anywhere else, the late cases illustrate the rule,
176 perhaps the most clearly. The appellate division, Supreme Court, in In re Titus Street in City of New York (123 N. Y. S., 1018), where it appeared that the city's witnesses testified that the property was worth $9,531 and the commissioners awarded $2,000 less, said:

"We do not think that this is meeting the requirements of the law; we do not believe that it is within the province of commissioners to arbitrarily set up their own opinion against that of the witnesses called by the city, and to award damages largely below the figure to which the moving party is committed, without something appearing in the record to justify such action. When a party comes into court and makes an admission against his interest, no court or judicial tribunal is justified in assuming that the admission is not true without at least pointing out the reason for discrediting it; it carries with it the presumption of truth, and this presumption is not to be overcome by the mere fact that the commissioners might themselves have reached a different conclusion upon the viewing of the premises. * * * This view of the commissioners, it seems to us, is for the purpose of enabling the commissioners to give proper weight and effect to the evidence before them, and it might justify them in giving larger damages than some of the witnesses thought proper, or even less than some of them declared to be sustained, but where the evidence produced by the moving party in a proceeding for taking property for public purposes fixes a sum, without any dis-
177 agreement in the testimony on that side, we are of the opinion that the cases do not justify a holding that the commissioners are authorized to ignore such testimony and to substitute their own opinion, in such a manner as to preclude the Supreme Court from reviewing the determination. That is not in harmony with that due process of law which is always demanded where rights of property are involved, and would make it possible for a corrupt commission to entirely disregard the rights of the individual to the undisturbed enjoyment of his property, or its equipment."

From these authorities and keeping in mind the local law on the subject, we think the correct rule to be that, if the testimony of value and damages is conflicting, the commissioners may resort to their knowledge of the elements which affect the assessment and which were obtained from a view of the premises, in order to determine the relative weight of conflicting testimony, but their award must be supported by the evidence adduced at their hearings and made of record, or it cannot stand; or, in other words, the view is intended solely for the purpose of better understanding the evidence submitted. To allow the commissioners to make up their judgment on their own individual knowledge of disputed facts material to the case, or upon their private opinions, would be most dangerous and unjust. It would deprive the losing party of the right of cross-examination and the benefit of all the test of credibility which the law affords. It would make each commissioner the absolute judge of the accuracy and value of his own knowledge or opinions and

compel the court to affirm the report on facts when all of
178 such facts were not before it. The evidence of such knowledge or of the grounds of such opinions could not be preserved in a bill of exceptions or questioned upon appeal. It is no hardship upon any of the parties to require that the award must be based upon the evidence. It is the duty of each party to submit what evidence of value he has and if he fails to do so he can not complain if the appraisement is kept within the bounds of the evidence presented to the commissioners.

In those cases where the testimony as to value and damages is conflicting the commissioners should always set forth in full their reasons for accepting the testimony of certain witnesses and rejecting that of others, especially in those cases where a view of the premises has been made.

The commissioners are required by law to be disinterested landowners of the province, selected by the court with a view to their ability to arrive at a judicious decision in the assessment of damages. The judgment of men with these qualifications upon the price of real property is entitled to some considerable weight. Being local men, it may be assumed that they are familiar with the local land values, the needs of the community in that line, and the adaptability of particular sites to commercial purposes. Then, too, their view of the premises enables commissioners to better understand the evidence submitted to them, as we have said above. The declarations of witnesses as to the value of the land, as to its
179 condition, or the conditions of improvements which may be located upon it, and comparisons made between the condemned land and other land in the vicinity may all be better understood by the commissioners if they have viewed the premises. It is, therefore, no slight divergence from the seeming preponderance of the evidence of record, as viewed by the court, which will justify the court in brushing aside the commissioners' report and appraising the property itself, based only upon a perusal of the evidence which was submitted to them. It is in those cases where the evidence submitted to the commissioners as to value varies greatly that the real difficulty lies. In these cases it is clear that some of the evidence must be untrustworthy. Hence, it is necessary to reject that evidence which shows the price to be greatly higher or lower than the just compensation to which the defendant owner is entitled. If, after making due allowance for the superior facilities which the commissioners had for arriving at the correct value of the property, the court is clearly of the opinion that the evidence relied upon by them is untrustworthy, and that other evidence rejected by the commission and which fixes the value of the property at a figure greatly at variance with their valuation of the property, bears the earmarks of truth, then it becomes the duty of the court to substitute for the commission's award the amount indicated by such evidence. That the estimated value made by the appraisers is to be given "great weight;" that such valuation is not to be
180 "lightly set aside;" that it will not be set aside "if there is substantial testimony to support it;" unless error is "plainly

manifest;" "unless it is apparent that injustice has been done;" "unless the commissioners have clearly gone astray or adopted erroneous principles;" "unless the commissioners acted upon wrong principles, or their award is grossly inadequate;" unless the award is "palpably excessive or inadequate;" unless it is "grossly inadequate or unequal;" is the burden of all the cases.

Let us now examine the evidence, keeping these legal principles in mind. The only discussion of the evidence of value made by the lower court was as follows:

"To determine this question (the value of the land) the court abides by and refers to the report of the commissioners dated July 10, 1913, because it understands that it must accept this report in all its parts for the reason that the prices fixed in the said report of P3.75 per square meter for parcel 21-B; that of P3.50 per square meter for parcel 21-A; and that of P2 per square meter for the rest of the parcels (naming them), are reasonable and just; the compensation which is made in the said report for the damages occasioned to the defendant Simeon Perez being also reasonable and just."

It will be seen that the lower court relied entirely upon the findings of the commissioners. The commissioners justified their appraisement of the land at a price so greatly in excess of its value as agricultural land upon the following considerations.
181 First, the construction of the provincial building and the high school had increased the price of land in their vicinity. Second, the neighborhood of these buildings had become a choice residential district. Third, the population in the vicinity had increased since it became known that the condemned property had been selected as a station site by the railroad company. We propose to discuss the evidence of value precisely along these lines, starting first, however, with its value as agricultural land, the only use to which it has ever been put.

The condemned land is not located in the commercial district of the town of Lucena, but is located near the provincial building and the high school. The land has been used from time out of mind solely for the cultivation of rice. Deogracias Maligalig, one of the defendants, testified that rice land in the municipality of Lucena was worth P500 per cavan (hectare). Melecio Allarey, another defendant, testified that such land was worth from P300 to P400 per hectare. Agustin testified that such land was worth between P400 and P500 per hectare if not under irrigation, and if under irrigation, more than P1,000. Ambrosio Zaballero, owner of more than 30 parcels of land in the municipality of Lucena, said that the site of the railroad station was nothing but a rice field prior to the coming of the railroad, worth from P300 to P400 per hectare. Cayo Alzona, the only witness for the plaintiff, testified that in Candelaria, rice land was worth between P200 and P250 per hectare, he
182 having purchased an uncleared parcel of rice land for P150 per hectare. It seems fair to accept the statement of the two defendants, Maligalig and Allarey, and fix the price of the condemned land for agricultural purpose- at P500 per hectare.

Witnesses for the defendants, including three of the latter, fixed the value of the condemned land at prices ranging from P5 to P8 per square meter. The remaining defendant, Icasiano, did not testify before the commissioners. But in his answer filed about seven months after purchasing the land for P0.81 per square meter, he alleged that his parcel was worth P5 per square meter. So that we have all of the defendants and several other witnesses estimating the value of the condemned land at about the same figure, or from P50,000 to P80,000 per hectare.

The defendant, Melecio Allarey, testified that he owned 30,000 square meters of land in the vicinity of the railroad station site, 2,895 square meters of which *was* wanted by the plaintiff company. Upon being asked what the value of his land was, he promptly replied that it was worth P5.50 per square meter. Asked if he were making his will whether he would list this property at a total value of P150,000, he evaded a direct reply by saying that he would divide it among his children. Asked if he considered himself the owner of land valued at P150,000, he replied that for his purpose he
183 figured on that price. Asked if he would declare the land to be worth that sum in his sworn tax declaration, he replied that he would accept the figures fixed upon by the tax appraisers. His testimony shows clearly that he did not desire to commit himself positively to the assertion that his three hectares of land *was* worth P150,000. His ambiguous and evasive replies on cross-examination do not at all harmonize with his unequivocal statement in his direct examination that his land was worth P5.50 per square meter. Apparently, when confronted with the price per hectare, which this estimate would put upon his land, he was somewhat astounded. Indeed, we are inclined to believe that one of the reasons for the high value placed upon the condemned land by all the witnesses is that they were estimating the price per square meter instead of per hectare, which is the customary method of fixing the price of agricultural land. A persual of the remainder of the testimony of the defendant Allarey shows that he is paying annual taxes on his 30,000 square meters of land amounting to between P12 and P13. He also naively informs us that he has not been able to till the land lately because he has no carabaos or other work animals.

Several of the witnesses for the defendants testified to having purchased land in the vicinity of the station site for residential purposes. Thus, Edard testified that he paid P1,400 for 220 square meters in 1910. Andres Dinlasan sold 119 square meters for P10 per square meter on June 6, 1912. He could give no reason why
184 the purchaser had paid so much for the land, but in response to a question said the purchaser had some more land joining it. Agustin bought 1,900 square meters in 1910 for P2 per square meter. Esteban Lagos paid P1,000 for a plot 16 by 18 meters in 1911. A most remarkable thing about these purchases is that, as choice residential sites, they are so extremely small. With the possible exception of the parcel purchased by Agustin, the parcels in question are hardly generous enough to permit of the construction of even a modest mansion. Cayo Alzona testified that he purchased

2,200 square meters in 1906 for P350, and that he purchased a little less than one hectare in 1912, all in the vicinity of the station site, for which he paid P1,500. It will be noted that there is considerable difference between these figures and the prices at which the other witnesses testified they purchased land in that neighborhood. That the evidence of sales of nearby land was competent, there can be no doubt. In Aledo Terminal Ry. Co. vs. Butler (246 Ill., 406; 92 N. E., 909), the court said:

"Evidence of voluntary sales of other lands in the vicinity and similarly situated is admissible in evidence to aid in estimating the value of the tract sought to be condemned, but the value of such testimony depends upon the similarity of the land to that in question and the time when such sales were made and the distance such lands are from those the value of which is the subject of inquiry."

In an earlier case, the Supreme Court of Illinois stated the
185 rule as follows:

"The theory upon which evidence of sales of other similar property in the neighborhood, at about the same time, is held to be admissible is, that it tends to show the fair market value of the property sought to be condemned. And it can not be doubted that such sales, when made in a free and open market, where a fair opportunity for competition has existed, become material and often very important factors in determining the value of the particular property in question. (Peoria Gas Light Co. vs. Peoria Term. Ry. Co., 146 Ill., 372; 21 L. R. A., 373; 34 N. E., 550.)"

The Supreme Court of Massachusetts, in Fourth National Bank vs. Com. (212 Mass., 66; 98 N. E., 86), affirms the rule as follows:

"It long has been settled, that in the assessment of damages where lands are acquired by eminent domain evidence is admissible of the price received from sales of land similar in character, and situated in the vicinity, if the transactions are not so remote in point of time that a fair comparison practically is impossible."

In Hewitt vs. Price (204 Mo., 31), it was said:

"It is sufficient to say upon this proposition that the law is well settled in this State upon that subject, and while the value or selling price of similar property may be taken into consideration in determining the value of the piece of property in litigation, it is equally
true that the location and character of such property should
186 be similar and the sales of such other property should at least be reasonably near in point of time to the time at which the inquiry of the value of the property in dispute is directed."

In Laing vs. United New Jersey R. R. & C. Co. (54 N. J. L., 576; 33 Am. St. Rep., 682; 25 A., 409), it was said:

"Generally in this and other states evidence of sales of land in the neighborhood is competent on an inquiry as to the value of land, and if the purchases or sales were made by the party against whom the evidence was offered it might stand as an admission. But such testimony is received only upon the idea that there is substantial similarity between the properties. The practice does not extend, and the rule should not be applied, to cases where the conditions are so dissimilar as not easily to admit of reasonable comparison, and much

must be left to the discretion of the trial judge in the determination of the preliminary question whether the conditions are fairly comparable."

Evidence of other sales made in good faith is competent if the character of such parcels as sites for business purposes, dwellings, or for whatever other use which enhances the pecuniary value of the condemned land is sufficiently similar to the latter that it may be reasonably assumed that the price of the condemned land would be approximately near the price brought by the parcels sold. The value of such evidence, of course, diminishes as the differences be-
187 tween the property sold and the condemned land increase. The property must be in the immediate neighborhood, that is in the zone of commercial activity with which the condemned property is identified, and the sales must be sufficiently near in point of time with the date of the condemnation proceedings as to exclude general increases or decreases in property values due to changed commercial conditions in the vicinity. No two estates are ever exactly alike, and as the differences between parcels sold and the land condemned must necessarily be taken into consideration in comparing values, we think it much better that those differences should be shown as part of the evidence of such sales, as is the practice in Iowa. (Town of Cherokee vs. S. C. & I. F. Town Lot and Land Co., 52 Iowa, 279; 3 N. W., 42.) And where these differences are so great that the sales in question can form no reliable standard for comparison, such evidence should not be admitted. (Presbrey vs. Old Colony & Newport R. Co., 103 Mass., 1.)

Aside from the bare fact that the real estate transactions referred to by the witnesses were somewhere in the vicinity of the condemned land, there is nothing to guide us as to the relative value of the condemned land. The differences which must have existed between the various parcels of land in the vicinity we are left to imagine. And while the commissioners' view of the condemned land undoubtedly assisted them in forming their estimate of value, still counsel should not have relied upon their astuteness to discover differences in values, but should have brought them specific-
188 ally to the attention of the commissioners. It seems rather unusual, also, that the bare statements of witnesses should be accepted as to the prices which nearby parcels brought, in view of the insistence of counsel that the condemned land is nothing more than agricultural land. These sales should have been thoroughly investigated to determine whether they were made bona fide and, if so, whether they were attended by unusual circumstances which materially increased the purchase price.

But while these transfers of nearby land are interesting as bearing upon the value of the condemned land, the record also shows several transfers of the latter itself after it became generally known that it had been selected by the railroad company as the site for its Lucena station. We take it that these transactions, in which the defendants were themselves parties, offer a far more certain basis for estimating the value of the land than do their testimony before the commissioners or the testimony of other witnesses as to fancy

prices paid for neighboring parcels. Romana Velasquez, who owned the major portion of the condemned land, disposed of hers to her nephews surnamed Perez. Her first sale was on July 21, 1912. This parcel contained 16,094 square meters and brought at this time P6,500, or a little more than P0.40 per square meter. A month later Perez sold this parcel to one Icasiano for P13,000, or a little less than P0.81 per square meter. Sra. Velasquez' next sale was of three parcels, the first two of which contained ap-
189 proximately 23,000 square meters, while the area of the third was described as three gantas of rice. The total price of the three parcels was P2,500 or a little over P0.10 per meter. In one of *of* these parcels was located approximately 8,700 square meters of the condemned land which the commissioners reported at a price higher than any of the rest.

On May 26, 1913, Icasiano, the then owner of the parcel containing 16,094 square meters, sold it to the Tayabas Land Company for P18,000; and on July 1, 1913, some twenty days after the commissioners had rendered their report, all of the remaining owners of the condemned land sold their holdings, parcel by parcel, as it had been assessed by the commissioners, to the same company for P1.05 per square meter, with the exception of Simeon Perez, who sold the two parcels owned by him at P2.27 and P2.11, respectively. Here is the most convincing argument that all the witnesses who placed values on the condemned property, ranging from P5 per square meter to P8 per meter, were se-iourly in error. After all the speculation concerning the land, after the commissioners had reported its value at prices ranging from P2 to P3.75 per square meter, the owners sold the land, parcel by parcel, as it had been assessed by the commissioners for a little more than P1 per meter, with the exception of Simeon Perez, who accepted P2.11 and P2.27 for the two parcels which the commissioners had appraised at P3.50 and P3.75 per meter, respectively. It is unfortunate that the commissioners did not have an opportunity to consider the deeds
190 executed by the defendants in favor of the Tayabas Land Company. With the commissioners' valuation of the land before them, the Tayabas Land Company was actually able to purchase from the defendants all of the condemned land as a greatly inferior price. The defendants were not able to resist an offer of P1 and P2 per meter for their holdings, notwithstanding their fervid declarations before the commissioners that their property was worth P5 per meter, and notwithstanding the official report by a board composed of local men that it was worth from P2 to P3.75 per meter. This, of course, does not include the defendant Icasiano, who sold out to the land company after the commission had been appointed but before it had begun its labors. It is to be remembered, however, that he both bought and sold the land after the railroad company had made known its intention of expropriating it, and that in his answer to the complaint he alleged his land to be worth P5 per meter.

Now, what was the object of the Tayabas Land Company in pur-

chasing the land? Evidently it was not with the intention of making any use of it, for the railroad company had long since taken possession. They, as well as the owners, were simply speculating on the probability that the award of the commissioners would be approved by the court. It was little more than a sporty guess on each side as to what would be allowed for the land by the final judgment of the court. The company believed the award would exceed P1.05 per meter, and the defendants thought the risk
191 that the award would be in a lesser amount was so great that they let the land go for the price the company offered them. Nor is it at all certain that the prices inserted in these deeds of sale were not fictitiously inflated. The circumstances under which the sales were made would readily suggest the expediency of inserting fictitious prices in the deeds.

The moment a parcel of land is wanted by a public service corporation the price, for some occult reason, immediately soars far beyond what the owner would think of asking or receiving in the open market. Owners ask fabulous prices for it and neighbors look on with an indulgent smile or even persuade themselves that the land is worth the price for which the owner holds out—in view of the fact that it is wanted by a corporation, whose financial resources are popularly supposed to be inexhaustible. The resultant good to a community due to the investment of new capital, the increased employment of labor, and the services the corporation will render are for the moment forgotten; and persons called upon for opinions as to the price of the desired property unconsciously, perhaps, but nevertheless, relax from that sound business acumen which guides them in their daily affairs, while they are considering the price not which they would care to pay if they wanted the land, but the price which the corporation ought to pay in view of the fact that it is a corporation.

The owner of condemned land is entitled to just compen-
192 sation. That is all the law allows him. "Compensation" means an equivalent for the value of the land (property) taken. Anything beyond that is more and anything short of that is less than compensation. To compensate is to render something which is equal in value to that taken or received. The word "just" is used to intensify the meaning of the word "compensation," to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full, ample. "Just compensation," therefore, as used in section 246 of the Code of Civil Procedure, means a fair and full equivalent for the loss sustained.

"The exercise of the power being necessary for the public good, and all property being held subject to its exercise when, and as the public good requires it, it would be unjust to the public that it should be required to pay the owner more than a fair indemnity for such loss. To arrive at this fair indemnity, the interests of the public and of the owner and all the circumstances of the particular appropriation should be taken into consideration. (Lewis on Eminent Domain, sec. 462.)"

The compensation must be just to the public as well as to the owners. (Searl vs. School District, 133 U. S., 533; 33 L. ed. 740.) Section 244 of our code says that:

"The commissioners shall assess the value of the property taken and used, and shall also assess the consequential damages to the property not taken and deduct from such consequential dam-
193 ages the consequential benefits to be derived by the owners (from the public use of the land taken)."

"To assess" is to perform a judicial act. The commissioners' power is limited to assessing the value and to determining the amount of the damages. There it stops; they can go no farther. The value and damages awarded must be a just compensation and no more and no less. But in fixing these amounts, the commissioners are not to act ad libitum. They are to discharge the trust reposed in them according to well established rules and form their judgment upon correct legal principles. To deny this is to place them where no one else in this country is placed—above the law and beyond accountability.

There is no question but that the compensation to which a defendant owner is entitled is the market value of the condemned property, to which, of course, must be added his consequential damages if any, or from which must be deducted his consequential benefits, if any. Such was our holding in Manila Railway Co. vs. Fabie (17 Phil. Rep., 206). But, as stated in Packard vs. Bergen Neck Ry. Co. (54 N. J. L., 553; 23 A., 506):

"The difficulty is not with the rule, but with its application. For the determination of the market value of land, which is that sum of money which a person, desirous but not compelled to buy and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor, is beyond doubt difficult. The test is logically and legally correct, but it cannot be ap-
194 plied to land with the accuracy with which it can be applied to stocks, bonds and personal property generally. Still it is this test which admittedly must be applied, even when the value of the land and the damages are found in separate sums."

It is a very difficult matter to limit the scope of the inquiry as to what the market value of condemned property is. The market value of a piece of land is attained by a consideration of all those facts which make it commercially valuable. Whether evidence considered by those whose duty it is to appraise the land is of that nature is often a very difficult matter to decide. The Supreme Court of the United States, in a carefully worded statement, marks out the scope of the inquiry as follows:

"In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be: What is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is it worth from its availability for valuable uses? * * * As a general thing, we should say that the compensation to the owner

is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future. (Boom Co. vs. Patterson, 98 U. S. 403.)"

195 This passage is quoted with approval in the late case of St. Louis, I. M. & S. R. Co. vs. Theodore Maxfield Co. (94 Ark., 135; 26 L. R. A. N. S., 1111; 126 S. W., 383), a very well considered case.

The Supreme Court of Missouri has also formulated an exceedingly clear statement of the matter in the Stock Yards Case (120 Mo., 541):

"The market value of the property means its actual value, independent of the location of plaintiff's road thereon, that is, the fair value of the property as between one who wants to purchase and one who wants to sell it; not what could be obtained for it in peculiar circumstances when greater than its fair price could be obtained; nor its speculative value; nor the value obtained through the necessities of another. Nor, on the other hand, is it to be limited to that price which the property would bring when forced off at auction under the hammer. The question is, if the defendant wanted to sell its property, what could be obtained for it upon the market from parties who wanted to buy and would give its full value."

These views are practically in accord with Lewis on Eminent Domain (2d ed.), section 478 where the rule is stated as follows:

"The market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of

196 having it. In estimating its value all the capabilities of the property, and all the uses to which it may be applied or for which it is adapted are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner. It is not a question of the value of the property to the owner. Nor can the damages be enhanced by his unwillingness to sell. On the other hand, the damages cannot be measured by the value of the property to the party condemning it, nor by its need of the particular property. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, may be shown and considered in estimating its value. (Approved in Seaboard Air Line vs. Chamblin, 108 Va., 42.)"

Now, what was the utility of the land condemned? So far as the record shows, its possible uses were, first, for the cultivation of rice; second, as a residential site owing to its proximity to the provincial building and the high school; and third, as a railroad station site.

Its location, from a farmer's point of view would doubtless enhance its value, since it was so close to the town of Lucena that the marketing of crops was a decidedly simple matter. For this reason it was more valuable as agricultural land than other farms farther away from town.

As a residential site it seems to have been so far a complete failure.

How long the high school had stood there the record does
197 not state. But although the provincial building had stood near it for several years, not a single homebuilder had selected any portion of the condemned land as a site for his residence. We note that all those who testified at the hearing before the commissioners to having purchased land in the vicinity for home sites, purchased other land than that condemned. Nor does the record contain any intimation that any of the owners of the land had ever attempted to dispose of any part of it as building lots. As a residential site, therefore, its value was decidedly problematical. Possibly, in the next dozen years a few houses might have been built upon the land, but, judging by the past record, its development along this line would have been extremely slow.

As a railroad station site, the record gives no indication that it is the sole possible location for that purpose in Lucena. It is not shown that its location for that purpose is at all superior to other possible locations. Indeed, it seems that the railroad company at first selected another site for its station on the other side of town. Hence, possessing no exclusive natural advantages for this purpose, it is a foregone conclusion that the railroad company would not willingly pay P81,000 for such a site when it could have purchased another site for, say, P1,500.

Here it seems proper to say that the appearance of the railroad in the town of Lucena was the occasion for an incipient real
198 estate boom in the vicinity of the provincial building and the high school. Several of the witnesses for the defendants testified what they would offer, if they were in the market for land in the vicinity of the station site, and the witness Alzona, the single witness who testified for the plaintiff, testified that some owners of land near the provincial building were asking between P500 and P700 for lots of 400 square meters. It is clear that these hypothetical purchases and sales do not offer any reliable basis upon which to calculate the actual market value of the land. The fond dreams of the owners of a sudden shift of the business center of the town of Lucena to their vicinity, or of its becoming a choice residential district, are not capital in hand.

"Proof must be limited to showing the present condition of the property and the uses to which it is naturally adopted. It is not competent for the owner to show to what use he intended to put the property, nor what plans he had for its improvement, nor the probable future use of the property. Nothing can be allowed for damages to an intended use. (Lewis on Em. Dom., 2d ed., sec. 709.)"

From the evidence we have discussed above, it is apparent that a good price for rice land in the vicinity of Lucena is P500 per hectare. With this as a basis, at what would the prospective buyer estimate the possibility of the land being used as a residential site sometime in the future and its possible advantages as a rail-
199 road site? Certainly, at nothing like the estimates contained in the report of the commissioners. To secure an adequate return on such a large investment as P80,000, every meter of the

land would have to be put to immediate use as residential sites, supposing that people could be induced to buy it for that purpose at such figures or to pay the necessarily large rent therefor based on such a valuation. And to hold out for such a figure in case a railroad company wanted the land as a depot site would mean that the company would locate its depot at some other place. It seems to us that either as a residential site or as a railroad station site, its value should be principally regulated by the value of other agricultural land on the outskirts of the town. In other words, the chance that it would be wanted for either of these purposes owing to its superior location was but slightly greater than that of other agricultural land adjacent to the town. We are, therefore, led to the conclusion that the price at which practically half of the condemned land was sold by Romana Velasquez to the defendant, Filemon Perez, is a most liberal estimate of its value. We refer to her sale of the parcel of 16,094 square meters for P6,500. This parcel comprises practically one-half of the entire station site and no outside land was included in the transaction. The sale was made after it became known that the land sold was to be part of the station site, and a statement to this effect was included in the deed. Both parties being aware that the land was to be condemned by the plaintiff
200 company, it cannot be said that they were not aware of all the latent utility of the land. For these reasons, the price which this parcel brought should serve as an excellent criterion of the value of the entire station site. And while no explanation is given of why the sale occurred, since, of course, no one would buy it with the expectation of using it himself when he knew that it would shortly be occupied by the railroad company, still there is not sufficient indication that it was sold for speculative purposes or that the element of speculation entered into the transaction to enable us to say that the price was inflated and exceeded the actual market value of the land. This price assumes the value of the condemned land as agricultural land to be worth P500 per hectare, and leaves a little more than P3,500 for its potential value as a residential district and as a railroad station site. This is, furthermore, approximately 400 per cent higher than Sra. Velasquez' second sale (some four months later) to Simeon Perez, when she sold about 23,000 square meters in the same neighborhood for a little over P1,000 per hectare.

It is to be further noted that the average assessed valuation of the condemned property is somewhat less than P0.08 per square meter, while the highest assessed valuation of any of it is only P0.23 per square meter, which is carried by some 5,973 square meters, or less than one-sixth of the whole. It is also to be noted that these
201 5,973 square meters were appraised by the commissioners as being worth exactly what the 16,094 square meters were worth, the latter being assessed for taxation purposes at only P0.03 per square meter.

At the price we have fixed, we are of the opinion that any consequential damages which may have been occasioned to any of the defendants by the condemnation proceedings is amply cared for.

The defendant, Simeon Perez, was awarded P600 damages by the commissioners for being compelled to remove a building in course of construction at the time the expropriation proceedings were started. This building was designed to serve partly as a warehouse and partly for stores. He commenced its construction about the middle of December, 1912, after it became known that the plaintiff company wanted the land for a railroad station. Construction work was ordered stopped by the court. From the vague description of this order in the record, we presume it was the order of the court of date of January 22, 1913, placing the plaintiff in possession of the land under the provisions of Act No. 1258 as amended by Act No. 1592. Until such action was taken by the railroad company, or until the commissioners were appointed and had appraised the land, we know of no legal provision which would prohibit the owner from doing with the land what he pleased. The Act in question gives to the company "the right to enter immediately upon the possession of the land involved." (Sec. 3.) This amendment to Act No. 1258 was enacted especially for the benefit of railroad
202 companies, and affords full protection to them if they act with due diligence. Until some such positive assertion of its desire to expropriate the land, no reason is seen why the company might not ask for a dismissal of the proceedings in accordance with section 127 of the Code of Civil Procedure. The right of the owner to the enjoyment of his property ought not be made to depend so entirely upon the whims of a third party. No attempt was made to meet the statement of Perez that he had expended a large sum of money on the construction of the building. The commissioners probably saw the structure or some of the materials which entered into it, and are in a much better position to judge of the amount expended upon the work than are we. They have fixed that amount at P600. In the absence of positive evidence in the record showing this finding to be grossly excessive, we must accept it as correct.

For the foregoing reasons, the judgment of the court below is modified by reducing the award for the parcel containing 16,094 square meters to the sum of P6,500. The damages for the remaining parcels will be fixed at the same proportionate amount. As thus modified the judgment appealed from is affirmed. No costs will be allowed on this appeal. The amount as herein fixed, together with interest, will be deposited with the clerk of the Court of First Instance of Tayabas, subject to the rights of the de-
203 fendants and the Tayabas Land Company.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

Johnson, J., reserves his vote.

Judgment modified.

204 THE UNITED STATES OF AMERICA,
*Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

versus

ROMANA VELASQUEZ, MELECIO ALLAREY, and DEOGRACIAS MALIGALIG, Defendants and Appellants.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing two hundred three (203) typewritten pages contain a true and correct translation and transcript of the record and proceedings in the Court of First Instance of Tayabas, Fourteenth Judicial District, and in the Supreme Court of the Philippine Islands in the case of the Manila Railroad Company versus Romana Velasquez, Melecio Allarey and Deogracias Maligalig, bearing No. 10278 on the docket of this Supreme Court.

In witness whereof, I hereunto set my hand and affix the seal of the Supreme Court *of the Supreme Court* of the Philippine Islands this 16th day of January, A. D. 1917.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
*Clerk of the Supreme Court of the Philippine Islands.*

204½ (Translation.)

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands, December 16, 1915.

File No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

ROMANA VELASQUEZ, MELECIO ALLAREY Y DEOGRACIAS MALIGALIC, Defendants and Appellants.

*Judgment.*

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and

order for judgment having been filed on the 23d day of November, A. D., nineteen hundred and fifteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Tayabas, dated the 2d day of February nineteen hundred and fourteen, and from which the above-entitled appeal was taken, be, and the same is hereby modified by reducing the award for the parcel containing 16,094 square meters to the sum of P6,500.00. The damages for the remaining parcels will be fixed at the same proportionate amount. As thus modified the judgment appealed from is affirmed. No costs will be allowed on this appeal. The amount as herein fixed, together with interest, will be deposited with the Clerk of the Court of First Instance of Tayabas, subject to the rights of the defendants and the Tayabas Land Company.

[Seal Corte Suprema, Islas Filipinas.]

(Sgd.) V. ALBERT,
*Clerk of the Supreme Court of the Philippine Islands.*

Certified correct:
V. ALBERT,
*Clerk Supreme Court of the Philippine Islands.*

205 Filed Clerk's Office, Supreme Court, Philippine Islands, Mar. 20, 1916, 3.41 p. m.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

ROMANA VELASQUEZ, MELECIO ALLAREY, and DEOGRACIAS MALIGALIG, Defendants and Appellants.

Eminent Domain.

*Petition for a Writ of Error.*

To the Honorable Chief Justice of the Supreme Court of the Philippine Islands or any Associate Justice of said Court:

The petition of Romana Velasquez, Melecio Allarey and Deogracias Maligalig or their assignees, the Tayabas Land Co., respectfully shows that on the 23d day of November, 1915, the Supreme Court of the Philippine Islands rendered a final decree against your petitioners in a certain cause wherein the Manila Railroad Company

was the plaintiff and appellant and Romana Velasquez, Melecio Allarey and Deogracias Maligalig were the defendants and appellees, for the expropriation of a certain right of way for the plaintiff's railway tracks and stations and the fixing of the value which the said plaintiff would have to pay for the land so expropriated; that a decree was rendered in the Court of First Instance for the Province of Tayabas awarding to your petitioners the price of P88,586.50, with interest at the rate of 6% per an-um since taking possession of the lands expropriated by plaintiff until said amount is paid, and that the
206 said decree was reversed by the Supreme Court of the Philippine Islands, thereby reducing the said sentence to P14,083.60, with interest at the rate of 6% per an-um since taking possession of the lands expropriated by plaintiff until said amount is paid, as will appear by reference to the record and proceedings in said cause, and that the said Supreme Court is the highest court of the said Philippine Islands in which a decision in said cause can be had.

And your petitioners *cal*im the right to remove said decree to the Supreme Court of the United States by writ of error, under Section 709 of the Revised Statutes of the United States and Section 10 of the Act of Congress for the administration of the affairs of Civil Government in the Philippine Islands, passed July 1, 1902, because the value in controversy involved in this case exceeds the sum of $25,000.00 United States currency, as appears from the affidavit of Calixto Barbari, filed herein; and because of the errors committed by the said Court, as appears by the record of the proceedings of the said cause and the assignment of errors, which are herewith submitted;

Your petitioners respectfully state that they have this day filed herewith the assignments of errors committed by this Court and intented to be urged by your petitioners and plaintiff in error in the prosecution of this their suit in error.

Wherefore your petitioners pray the allowance of a writ of error, returnable to the Supreme Court of the United States, at Washington, D. C., for the correction of the errors complained of and that a duly authentical- transcript of the record, proceedings and
207 papers herein be sent to the United States Supreme Court.

Dated at Manila, P. I., March 18th, 1916.

ALFREDO CHICOTE,
MARIANO LIM,
*Attorneys for Petitioners.*

The foregoing claim of appeal is allowed.

——— ———,
*Justice of the Supreme Court of the Philippine Islands.*

Received copy this 20th day of March, 1916.

WILLIAM A. KINCAID,
THOMAS L. HARTIGAN,
By J. BOYA.

S. D. G.

will ask that this Honorable Court hear and decide the above motion. motion.

Manila, P. I., April 28, 1917.

CROSSFIELD & O'BRIEN,
*Attorneys for the Tayabas Land Company.*

Rec'd copy on the 28 day of Apr., 1917.
HARTIGAN & WELCH,
*Attorneys for Plaintiff.*

233 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 10278.

MANILA RAILROAD COMPANY, Plaintiff and Appellant (Defendant in Error),

versus

THE TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, Defendant and Appellant (Plaintiff in Error).

*Order.*

Upon reading the petition of the attorneys for The Tayabas Land Company, plaintiff in error in the above-entitled case, and no objection having been filed after due notice of said petition had been served upon the attorneys for the defendant in error, the time for the filing of the record of said case in the Office of the Clerk of the Supreme Court of the United States is hereby extended for a period of ninety days from the date of the issuance of a nunc pro tunc citation.

Manila, P. I., May 15, 1917. A. C. CARSON,
*Associate Justice, Acting in Vacation.*

Ar.

234 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 10278.

MANILA RAILROAD COMPANY, Defendant in Error,

versus.

THE TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, Plaintiff in Error.

*Citation Nunc Pro Tunc.*

The President of the United States to the Manila Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Wash-

ington, D. C., within one hundred and twenty days from the date hereof pursuant to a writ of error duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's Office of said Court on the 20th day of March, 1916, in a cause wherein The Tayabas Land Company, The Assignee and successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, is plaintiff in error and you are defendant in error, to show cause, if any, why the decree rendered against said plaintiff in error, as in the said writ in error mentioned, should not be corrected, and why speedy justice should not be done to the
235 parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States this 15th day of May, A. D. 1917, as of March 20, 1916.

A. C. CARSON,
*Associate Justice of the Supreme Court,*
*Acting in Vacation.*

Ar.

Service of a copy of the within citation is hereby admitted, this 19 day of May, 1917.

HARTIGAN & WELCH,
*Attorneys for Manila Railroad Company,*
*Defendant in Error.*

236 Filed in the Clerk's Office April 30, 1917. V. Albert.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff & Appellant,

vs.

ROMANA VELASQUEZ, MELECIO ALLAREY, and DEOGRACIAS MALIGALIG, Defendants & Appellants.

Comes now the Tayabas Land Company, a general civil partnership duly organized and registered under the laws of the Philippine Islands and doing business therein, the assignee and successor of the defendants in the above-entitled action, by the undersigned attorneys, and suggests to this Honorable Court that the title of this action be made to read as follows:

MANILA RAILROAD COMPANY, Plaintiff,

vs.

THE TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, Defendant.

Judgment was rendered both in the Trial Court and in the Supreme Court in favor of the Tayabas Land Company, who is the real party defendant. Also, that the Clerk of this Court be directed to advise the Clerk of the Supreme Court of the United States, at Washington, D. C., of the same, so that the case may be registered under this title.

Respectfully submitted,

CROSSFIELD & O'BRIEN,
*Attorneys for Tayabas Land Co.*

Manila, Philippine Islands, April 28, 1917.

237 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

versus

ROMANA VELASQUEZ, MELECIO ALLAREY and DEOGRACIAS MALIGALIG, Defendants and Appellants.

*Order.*

Upon reading the petition of the attorneys for the defendants and appellants in the above-entitled case, and no objection having been filed after due notice of said petition had been served upon the attorneys for the plaintiff and appellant, the title of the above case is hereby substituted *for* the following—

MANILA RAILROAD COMPANY, Plaintiff,

versus

THE TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, Defendant.

It is further ordered that the Clerk of this Court advise the Clerk of the Supreme Court of the United States at Washington, D. C., of this substitution, so that the case may be registered under this title.

Manila, P. I., May 15, 1917.

A. C. CARSON,
*Associate Justice, Acting in Vacation.*

238 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between Manila Railroad Company, Plaintiff, versus The Tayabas Land Company, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, Defendant, a manifest error hath happened, to the great damage of the said defendant, The Tayabas Land Company, the assignee and successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 120 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court
239 may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 15th day of November, A. D. 1917.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
*Clerk of the Supreme Court*
*of the Philippine Islands.*

Allowed by
A. C. CARSON,
*Associate Justice of the Supreme Court*
Ar. *of the Philippine Islands.*

Endorsed on cover: File No. 26285. Philippine Islands Supreme Court. Term No. 818. The Tayabas Land Company, Assignee and Successor of Romana Velasquez et al., Plaintiff in Error, vs. The Manila Railroad Company. Filed January 16th, 1918. File No. 26285.

198 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

ROMANA VELASQUEZ, MELECIO ALLAREY, and DEOGRACIAS MALIGALIG, Defendants and Appellants.

Eminent Domain.

*Assignment of Errors.*

Comes now the plaintiffs in error to wit: Romana Velasquez, Melecio Allarey and Deogracias Laligalig, or their assignee, The Tayabas Land Co., etc., and respectfully submit that in the record, proceedings and decision and final judgment of the Supreme Court of the Philippine Islands in the above entitled action there is manifest error in this, to wit:

1. The Supreme Court of the Philippine Islands erred in deciding that the weight or preponderance of the evidence was against the findings and the decision of the trial court as determined by the Code of Civil Procedure for the Philippine Islands, section 273.

2. The said Court erred in holding that the land in question is agricultural land instead of City or Suburban land.

3. The conclusion of the Supreme Court of the Philippine Islands as to the liberal value of the land in question is based upon incompetent evidence and erroneous findings of fact.

4. The said Court erred in failing to affirm the decision of the Court of First Instance.

Wherefore the said plaintiff in error prays that the said decision of the Supreme Court of the Philippine Islands be reversed
199 and that the original decision entered by the Court of First Instance be affirmed with costs.

Manila, P. I., March 18th, 1916.

ALFREDO CHICOTE,
MARIANO LIM,
*Attorneys for Plaintiffs in Error.*

Received copy this 20th day of March, 1916.

WILLIAM A. KINCAID,
THOMAS L. HARTIGAN,
By J. BOYA, *Dy.*

210 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

ROMANA VELASQUEZ, MELECIO ALLAREY, and DEOGRACIAS MALIGALIG, Defendants and Appellants.

Eminent Domain.

UNITED STATES OF AMERICA,
*Philippine Islands,*
*City of Manila, ss:*

Calixto Berbari, of legal age, and being first duly sworn, depose and says:

That he was for a long time ago a merchant and property owner in the province of Tayabas, P. I., and now is the manager of the Tayabas Land Co., a partnership dedicated to transact in estates business in said province, and that he knows the value of the property in controversy in this cause conclusive of all costs and interests; and that the same is valued at $82,500.00, United States Currency.

CALIXTO BERBARI.

Subscribed and sworn to before me this 18th day of March, 1916, at Manila, P. I.; affiant exhibited to me his cedula No. F1414594, issued at Lucena, Tayabas, P. I., on the 22 day of March, 1915.

[Seal José Arnaiz, Notario Público, Manila, Islas Filipinas.]

JOSÉ ARNAIZ,
*Notary Public.*

My commission expires December 31st, 1916.

No. 33, Page 11, Book —.

211 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

ROMANA VELASQUEZ, MELECIO ALLAREY, and DEOGRACIAS MALIGALIG, Defendants and Appellants.

Eminent Domain.

*Bond.*

Know all men by these presents: That We, The Tayabas Land Co., as assignee of said Romana Velasquez, Melecio Allarey and Deogracias Maligalig, as Principals, and Alfredo Chicote, and Calixto Berbari, as Sureties, are held and firmly bound unto the Manila Railroad Company in the sum of Five Hundred Dollars ($500.00) United States Currency, to be paid to the said obligee, its successors, representatives and assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of March, 1916, A. D.

Whereas the above plaintiffs in error have prosecuted a writ of error in the Supreme Court of the United States, to reverse the judgment entered in the above entitled action by the Supreme Court of the Philippine Islands;

Now, therefore, the condition of this obligation is such that if the above named plaintiffs in error shall prosecute its writ of error to effect, and answer all costs and damages, if it shall fail to
212 make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE TAYABAS LAND CO.,
CALIXTO BERBARI, *Serente,*
*Principal.*
ALFREDO CHICOTE,
CALIXTO BERBARI,
*Sureties.*

Manila, P. I., March 18th, 1916.

UNITED STATES OF AMERICA,
*Philippine Islands,*
*City of Manila, ss:*

In the City of Manila, this 18th day of March, 1916, A. D., personally appeared before me Mr. Calixto Berbari with Certificate of Registration Letter F, No. 1414594, issued at Lucena, Tayabas, P. I.,

on the 22 day of March, 1915, and Mr. Alfredo Chicote with Certificate of Registration Letter F, No. 7031, issued at Manila, P. I., on the 7 day of Enero, 1916, and executed the foregoing Bond, which they confirmed and ratified, declaring the same to be their free and voluntary act and deed.

[Seal José Arnaiz, Notario Público, Manila, Islas Filipinas.]

JOSÉ ARNAIZ,
*Notary Public.*

My commission expires Dec. 31, 1916.

No. 34, Page 11, Book —.

Approved
GRANT T. TRENT, *Justice.*

213 MANILA,
*Philippine Islands, ss:*

We, Calixto Berbari, of Manila, P. I., and Alfredo Chicote, of Manila, P. I., having been duly sworn, state and depose that we are residents and householders in the Philippine Islands, and that we are actually worth the amount specified in the foregoing undertaking, to wit: Five Hundred Dollars ($500.00) United States Currency, over and above all just debts and obligations and property exempt from execution.

ALFREDO CHICOTE.
CALIXTO BERBARI.

Subscribed and sworn to before me this 18th day of March, 1916, at Manila, Philippine Islands.

[Seal José Arnaiz, Notario Público, Manila, Islas Filipinas.]

JOSÉ ARNAIZ,
*Notary Public.*

My commission expires December 31st, 1916.

No. 35, page 11, Book —.

314 THE UNITED STATES OF AMERICA,
*Philippine Islands:*

In the Supreme Court of the Philippine Islands.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorables the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a cause which is in said Supreme Court of the Philippine Islands, before you or some of you, between The Manila

Railroad Company, plaintiff and appellant, and Romana Velasquez, Melecio Allarey and Deogracias Maligalig, defendants and appellants, a manifest error has happened to the great damage of said plaintiff and appellant, The Manila Railroad Company, as by its complaint appears.

We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ, so that you may have the same in the City of Washington on the — day of ——, 1917, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected
215 the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and custom of the United States — be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 20th day of March, in the year of our Lord one thousand nine hundred and sixteen.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
*Clerk of the Supreme Court*
*of the Philippine Islands.*

*Order.*

While entertaining serious doubts as to whether this petition should be granted, but, in view of the fact that the attorneys for the plaintiff company state that they have no objections to the granting of the writ of error, the same is hereby allowed.

(Sgd.) GRANT T. TRENT,
*Associate Justice Supreme Court*
*of the Philippine Islands.*

(See original order, next page.) V. A.

216 THE UNITED STATES OF AMERICA,
*Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. No. 10728.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,
versus
ROMANA VELASQUEZ, MELECIO ALLAREY, and DEOGRACIAS MALIGALIG, Defendants and Appellants.

*Order.*

While entertaining serious doubts as to whether this petition should be granted, but, in view of the fact that the attorneys for the

plaintiff company state that they have no objections to the granting of the writ of error, the same is hereby allowed.

GRANT T. TRENT,
*Associate Justice Supreme Court of the Philippine Islands.*

Es Copia.

KINCAID & HARTIGAN.
CROSSFIELD & O'BRIEN.
Mr. ANGELL.

217 Filed Clerk's Office, Supreme Court, Philippine Islands, Aug. 29, 1916, 3.25 p. m.

R. G. No. 10278.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 879.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellee,

versus

ROMANA VELASQUEZ Y OTROS, Defendants and Appellants.

To the plaintiff or its attorneys:

In the appeal as plaintiffs in error to the Supreme Court of the United States of America, we hereby notify you that the following parts of the record in this case will be translated and remitted to the Supreme Court for review of the decision of the Supreme Court of the Philippine Islands. If you have any objections to any of these parts or desire that any additional parts be added, please notify the Clerk of the Supreme Court of the Philippine Islands as soon as convenient.

| | | |
|---|---|---|
| Page | 1. | The complaint and motion of plaintiff; |
| " | 11. | Order to take possession of property; |
| " | 34. | Answer; |
| " | 42. | Order for new parties defendants; |
| " | 47. | Answer of defendants; |
| " | 49. | Application for appointment of commissioners; |
| Pages | 50 to 64. | Evidence; |
| Page | 65. | Commissioners' report; notice and order for hearing; appointment and qualification of commissioners; |

| | | |
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| Pages | 69 to 76. | Report of the commissioners; |
| Page | 87. | Bill of Sale; |
| " | 90. | Bill of Sale; |
| " | 92. | Bill of Sale; |
| " | 94. | Bill of Sale; |
| " | 96. | Bill of Sale; |
| Pages | 98–121. | Evidence; |
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| Page | 135. | Argument; |
| Pages | 191 to 193. | Order for proof of title; |
| " | 209 to 215. | Exhibits; |
| Pages | 217–238, | Evidence. |
| Pages | 241–263. | Exhibits. |
| Page | 266. | Exhibit; |
| " | 268. | Translations; |
| " | 278. | Decision; |
| " | 294. | Motion for new trial and exception; |
| " | 298. | Motion for new trial and exception; |
| " | 300. | Order; |
| " | 301. | Stipulation; |
| " | 303. | Exception; |
| " | 304. | Exception; |
| " | 320. | Exhibit "2"; |
| " | 323. | Sentence, Supreme Court; (petition for writ of error; assignments of error; affidavit of value; bond; decree allowing appeal.) |

Respectfully submitted,

CROSSFIELD & O'BRIEN,
*Attorneys for Defendants.*

Manila, P. I., August 29th, 1916.

Received Aug. 29, 1916. Hartigan & Welch, W. D. Clifford. Manila.

219 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

THE TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, Defendant and Appellee.

Eminent Domain.

To the Manila Railroad Company, the plaintiff and appellant herein, or its attorneys:

You are hereby notified that on the 27 day of August, 1917 at 8:30 o'clock A. M. or as soon thereafter as counsel can be heard, the Tayabas Land Company, the Assignee, etc., defendant herein will move this Honorable Court for permission to file an amended petition for a writ of error and an amended assignment of error so that it may appear that the Tayabas Land Company, the assignee and successor of the former defendants, is the real party defendant or plaintiff in error to this action in accordance with the application, assignment of errors bond guaranteeing payment of costs and affidavits as to the amount in controversy between the parties attached hereto and made a part hereof, and will ask for the allowance of the petition and assignment of errors as thus amended.

Manila, P. I., August 25th, 1917.

CHARLES W. O'BRIEN,
*Attorney for The Tayabas Land Co., etc., Defendants.*

Received copy this 25 day of August, 1917, and no objection.

HARTIGAN & WELCH,
*Attorneys for the Manila Railroad Co., Plaintiff and Appellant.*

220 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

THE TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, Defendant and Appellee.

Eminent Domain.

*Petition for a- Allowance & Approval of an Amended Writ of Error.*

To the Honorable Chief Justice of the Supreme Court of the Philippine Islands or any Associate Justice of said Court:

The petition of The Tayabas Land Company, the assignee and successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, respectfully shows that on 23rd day of November 1915, the Supreme Court for the Philippine Islands rendered a final decree against your petitioner in a certain cause, wherein the Manila Railroad Company was the plaintiff and appellant and The Tayabas Land Company, the assignee and successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey was the defendant and appellee, for the expropriation of a certain right of way for the plaintiff's railway tracks and stations and the fixing of the value which the said plaintiff would have to pay for the land so expropriated; that a decree was rendered in the Court of First Instance for the Province of Tayabas awarding to your petitioner the price of P88,586.50, with interest at the rate of 6%
221 per annum since taking possession of the lands expropriated by plaintiff until said amount is paid, and that the said decree was reversed by the Supreme Court of the Philippine Islands, thereby reducing the said sentence to P14,083.60, with interest at the rate of 6% per annum since taking possession of the lands expropriated by plaintiff until said amount is paid, as will appear by reference to the record and proceedings in said cause, and that the said Supreme Court is the highest court of the said Philippine Islands in which a decision in said cause can be had.

And your petitioner claims the right to remove said decree to the Supreme Court of the United States by writ of error, under Section 709 of the Revised Statutes of the United States and Section 10 of the Act of Congress for the administration of the affairs of Civil Government in the Philippine Islands, passed July 1, 1902, because

the value in controversy involved in this case exceeds the sum of $25,000.00 United States Currency, as appears from the affidavit of Calixto Barbari, filed herein; and because of the errors committed by the said Court, as appears by the record of the proceedings of the said cause and the assignment of errors, which are herewith submitted;

Your petitioner respectfully states that they have this day filed herewith the assignments of errors committed by this Court and intended to be urged by your petitioners and plaintiff in error in the prosecution of this its suit in error.

And whereas a writ of error was allowed on March 20, 1916, and the transcript of the record, proceedings and papers were forwarded to the Supreme Court at Washington and it then appearing that the party defendant was incorrectly stated, and

Whereas after the party defendant had been duly corrected by order of this court on May 15, 1917, the entire record was returned to the Supreme Court of the Philippine Islands for the necessary corrections in the petition for a writ of error and assignment
222 of errors;

Wherefore our petition now prays the allowance of a writ of error as thus amended, returnable to the Supreme Court of the United States, at Washington, D. C., for the correction of the errors complained of and tha- a duly authentical- transcript of the record proceedings and papers herein be sent to the United States Supreme Court.

Dated at Manila, P. I., Aug. 25, 1917.

CHARLES W. O'BRIEN,
*Attorney for Petitioner.*

223 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, Plaintiff in Error,

vs.

MANILA RAILROAD COMPANY, Defendant in Error.

*Assignment of Errors.*

Comes now the Tayabas Land Company, the assignee and successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, plaintiff in error in the above-entitled cause, and avers and shows that in the record and proceedings in said cause, the Supreme Court of the Philippine Islands erred to the grievous injury and wrong of the plaintiff in error in the following particulars, to wit:

1. The Supreme Court of the Philippine Islands erred in holding as a matter of law that the plaintiff in error was not entitled to re-

cover the amount fixed by the commissioners appointed to hear the evidence and view the premises as approved by the Trial Court under Section 246 of the Code of Procedure of the Philippine Islands, as there was no "cause shown" so that the commissioners' report could be treated in the alternative as provided in said section.

2. As a matter of law the Supreme Court of the Philippine Islands erred in setting aside the conclusions of the Court of First Instance based upon the weight and preponderance of the
224 evidence as determined by the rule of evidence of Section 273 of the Code of Procedure for the Philippine Islands, as the decision rendered by the Supreme Court of the Philippine Islands is not within the certain exceptions authorized to be reviewed under the procedure of the Supreme Court of the Philippine Islands, as provided in Section 497 of its Code of Procedure.

3. The conclusion of the Supreme Court of the Philippine Islands as to the liberal value of the land in question is based upon incompetent evidence and erroneous conclusions of law.

Wherefore, for these and other manifest errors appearing in the record the said Tayabas Land Company, the assignee and successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, plaintiff in error, prays that the judgment of the said Supreme Court of the Philippine Islands be reversed and set aside, and held for naught, and that judgment be rendered for plaintiff in error, granting it its rights in accordance with the laws of the Philippine Islands and of the United States of America; and plaintiff in error also prays judgment for its costs.

Manila, Philippine Islands, Aug. 25, 1917.

CHARLES W. O'BRIEN,
*Attorney for Tayabas Land Company, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, Plaintiff in Error, Manila, P. I.*

225 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Defendant in Error,

vs.

THE TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, Plaintiff in Error.

UNITED STATES OF AMERICA,
*Philippine Islands, City of Manila, ss:*

Calixto Berbari, of legal age, and being first duly sworn, deposes and says:

That he was for a long time ago a merchant and property owner in the Province of Tayabas, P. I., and now is the manager of the Tayabas Land Co. etc., a partnership dedicated to transact in estates business in said province, and that he knows the value of the property in controversy in this cause exclusive of all costs and interests; and that the same is valued at $82,500.00 United States Currency.

CALIXTO BERBARI.

Subscribed and sworn to before me this 14th day of August 1917, at Manila, P. I., affian- exhibiting to me his cedula No. F. 67387 issued at Manila, P. I., on the 24th day of April 1917.

[Seal of C. W. O'Brien, Notary Public, Manila, Philippine Islands.]

C. W. O'BRIEN,
*Notary Public.*

My commission expires December 31, 1918.

Notarial register No. 148, P. 76, Book III.

226 Know all men by these presents, that we, The Tayabas Land Company, as principal, and C. W. O'Brien and A. S. Crossfield, as sureties, are held and firmly bound unto The Manila Railroad Company in the full and just sum of Five Hundred ($500.00) (U. S. C.) dollars, to be paid to the said The Manila Railroad Company, its certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twentieth day of August, in the year of our Lord one thousand nine hundred and seventeen.

Whereas, lately at a Supreme Court of the Philippine Islands in a suit depending in said Court, between The Tayabas Land Company, The assignee and successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allerey, as plaintiffs, and The Manila Railroad Company, as defendant, a judgment was rendered against the said The Tayabas Land Company, The assignee and successor of Romana Velasquez, et al., and the said The Tayabas Land Company, The Assignee and successor of Romana Velasquez, et al., having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Manila Railroad Company citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within 120 days from the date thereof.

Now, the condition of the above obligation is such, that if the said The Tayabas Land Company, The Assignee and Successor of Romana Velasquez, et al., shall prosecute the writ of error to effect, and answer all damages and costs if it fail to make its plea good,

then the above obligation to be void; else to remain in full force and virtue.

C. W. O'BRIEN. [SEAL.]
A. S. CROSSFIELD. [SEAL.]
THE TAYABAS LAND CO., [SEAL.]
Per CALIXTO BERBARI, *Serente.*

Sealed and delivered in presence of—
S. W. O'BRIEN.
F. G. CARAG.

Approved by—
A. C. CARSON,
*Associate Justice of the Supreme Court of the Philippine Islands.*

227 CITY OF MANILA,
*Philippine Islands, ss:*

We, C. W. O'Brien and A. S. Crossfield, both of Manila, P. I., having been duly sworn, state and depose that we are residents and property owners in the Philippine Islands, and that we are actually worth the amount specified in the foregoing undertaking, to wit Five Hundred Dollars ($500.00) U. S. Cy., over and above all just debts and obligations and property exempt from execution.

C. W. O'BRIEN,
A. S. CROSSFIELD.

Subscribed and sworn to before me this 20th day of August, 1917, at Manila, Philippine Islands.
A. S. Crossfield'- Cedula No. F-2785, issued at Manila, P. I., on the 3rd day of January, 1917 and
C. W. O'Brien'- Cedula No. F-2786, issued at Manila, P. I., on the 3rd day of January, 1917.

[Seal of S. W. O'Brien, Notary Public, Manila, Philippine Islands.]

S. W. O'BRIEN,
*Notary Public.*

My commission expires December 31, 1918.

Notarial Register No. 392, P. 11, Book III.

228 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

THE TAYABAS LAND COMPANY, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, Defendant and Appellee.

Eminent Domain.

*Allowance of Amended Petition for a Writ of Error and Assignment of Errors.*

On March 18, 1916, the defendants filed a petition in this Court, praying for the allowance of a writ of error, which was accompanied by an assignment of errors, bond for cost, and an affidavit in regard to the amount in controversy between the parties. The writ of error was duly allowed by Associate Justice Grant T. Trent on March 20, 1916; and subsequently, upon motion duly moved the title of the case was corrected and changed by substituting the Tayabas Land Company, as the assignee and successor of the defendants, Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig and Melecio Allarey, and as the papers had been forwarded to the Supreme Court in Washington, D. C., it was necessary to have the records, proceedings and papers returned to this Court, in order that the necessary amendments might be made in the petition and assignment of errors.

And now comes the The Tayabas Land Company, the assignee and successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey, the appellee above named on this 27 day of August, 1917, and
229 files and presents to this Court, its amended petition, praying for the approval and allowance of the writ of error as thus amended intended to be urged by it; and praying further that a duly authenticated transcript of the records, proceedings, and papers — which the judgment herein was rendered may be sent to the Supreme Court of the United States; and that such other and further proceedings may be had in the premises as may be just and proper; and it further appearing by affidavit that the amount in controversy between the parties is in excess of $25,000.00 United States Currency and that the defendant has given a bond in sum of Five Hundred Dollars ($500.00), guaranteeing the payment of costs; and upon consideration of the said petition, this court desiring to give petitioner an opportunity to test in the Supreme Court of the United States

the questions therein presented, as it appears that the petitioner is entitled to file and have approved and allowed the amended petition for a writ of err- and amended assignment of errors it is therefore ordered by this court that the amended petition and assignment of errors be allowed as prayed.

In testimony whereof, witness my hand this 29 day of August, 1917.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
*Associate Justice of the Supreme Court*
*of the Philippine Islands.*

230 UNITED STATES OF AMERICA, *ss:*

To the Manila Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 120 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the Philippine Islands wherein The Tayabas Land Company, the Assignee and Successor of Romana Velasquez, Simeon Perez, Filemon Perez, Francisco Icasiano, Deogracias Maligalig, and Melecio Allarey is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable A. C. Carson, Associate Justice of the Supreme Court of the Philippine Islands, this twenty-ninth day of August, in the year of our Lord one thousand nine hundred and seventeen.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
*Associate Justice of the Supreme Court*
*of the Philippine Islands.*

231 On this 30th day of August, in the year of our Lord one thousand nine hundred and seventeen, personally appeared Charles W. O'Brien before me, the subscriber, a Notary Public in and for the City of Manila, Philippine Islands, and makes oath that he delivered a true copy of the within citation to Messrs. Hartigan & Welsch, the attorneys for The Manila Railroad Co., the defendant in error herein, on the 30th day of August, 1917, at their office in the City of Manila.

CHARLES W. O'BRIEN.

Cedula No. F. 2786, Manila, January 3, 1917.

Sworn to and subscribed the 30th day of August, A. D. 1917.

[Seal S. W. O'Brien, Notary Public, Manila, Philippine Islands.]

S. W. O'BRIEN,
*Notary Public.*

My commission expires December 31, 1918.

Notarial Register No. 401, P. 13, Book III.

232 Filed Clerk's Office, Supreme Court, Philippine Islands, Apr. 30, 1917, 8:30 a. m.

Filed Clerk's Office, Supreme Court, Philippine Islands, Aug. 2, 1917, 4:10 p. m.

UNITED STATES OF AMERICA,
*Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. No. 10278.

THE MANILA RAILROAD COMPANY, Plaintiff and Appellant,

vs.

ROMANA VELASQUEZ et al., Defendants & Appellants.

Comes now the Tayabas Land Co., as the assignee and successor in interest of the defendants herein, and moves this Honorable Court to issue a citation nunc pro tunc in the above-entitled action as it appears from the record herein that none was issued at the time of granting the appeal herein, and that the date of registering the appeal in the United States be extended for a period of ninety days from the date of the issuance of the nunc pro tunc citation.

Respectfully submitted.

CROSSFIELD & O'BRIEN,
*Attorneys for the Tayabas Land Company.*

April 28, 1917. Manila, Phil. Islands.

*Notice.*

To the plaintiff or its attorney.

Sirs: Please take notice that on Monday, May 14th, 1917, at 9:00 a. m., or as soon thereafter as counsel can be heard, the undersigned

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IN THE

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1918.**

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# No. 331.

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THE TAYABAS LAND COMPANY, ASSIGNEE AND SUCCESSOR OF ROMANA VELASQUEZ ET AL., PLAINTIFF IN ERROR,

*vs.*

THE MANILA RAILROAD COMPANY.

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IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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## BRIEF FOR PLAINTIFF IN ERROR.

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### Statement of Facts.

This case arose in the Philippine Islands through proceedings instituted by the Manila Railroad Company, which condemned certain land in the municipality of Lucena, province of Tayabas, under its power of eminent domain, for use as a railroad station. The bill of complaint was filed by the railroad company, January 22, 1913, in the Court of First

Instance of the Seventh District (Rec., 1), and after citing jurisdictional facts and specifying the lands desired for the station, alleged that the company was unable to acquire the same because of its inability to discover the true owners, but prayed the court to issue citations upon persons in whose name the property was assessed, namely, Romana Valesquez, Melecio Allarey and Deogracias Maligalig, whose lands, as described in a plan filed by the company but not included in this record, and the measurements thereof, are specifically set forth on page 4 of the record. Thereafter, on the 28th of January, 1913, said Romana Velasquez filed a motion in court to the effect that she no longer owned the land assessed in her name, but had sold the same to Messrs. Simeon Perez and Filemon Perez, who were thereupon included as defendants in the cause (Rec., 5 and 6).

Thereafter, the defendants, including, it seems, the aforesaid Romana Velasquez, entered their appearance on the 11th of February, and filed a joint answer on the 17th day of the same month, setting forth:

(1) That the land desired by the railroad was valued at P5.00 a square meter.

(2) That the said Romana Velasquez had transferred parcel 21 containing 16,094 square meters, as set forth on page 4 of the record, and that it was now owned by one Francisco Icasiano of Manila. The parcels 21*a* and 21*b* as more particularly described on page 4, were now owned by the said Simeon Perez and Filemon Perez with the exception of a small portion of 21*b* which she evidently retained.

(3) That the said Simeon Perez before the filing of the complaint had commenced to build a warehouse on a portion of the land purchased by him from Romana Velasquez and that he was damaged to the extent of P733 by virtue of an order of the court compelling him to cease work upon the said warehouse when the bill of complaint was filed on the 22d of January.

On the 24th of February, by an order of the court, the aforesaid Francisco Icasiano was ordered to answer the original bill of complaint, which he did on the 18th of March, setting forth that he was at that time the owner of the parcel 21, containing 16,094 square meters, and that the same was valued at P5.00 per square meter (Rec., 8).

Thereupon, on the 16th of April, 1913, in accordance with the joint petition of all the parties to the proceeding, and in accordance with the statutory provisions regulating such proceedings, the Court of First Instance appointed three commissioners to hear the parties in the case, inspect the property desired by the railroad, and to fix the amount to be paid by the railroad to the owners thereof (Rec., 8); and the said commissioners, after having been duly sworn and after having duly notified the parties, on the 6th and 7th of June, 1913, viewed the property and heard all the evidence offered by the parties, and three days later filed their unanimous report (Rec., 8, 9, 10, 11), which set forth, first, that due notice had been served upon all the parties to the proceedings and copies of the same had been posted in the Municipal Buildings of Lucena; second, that upon the day appointed the parties had appeared, represented by counsel, and that thereupon the commissioners personally inspected the land involved and examined the same "inch by inch" (Rec., 9); third, that on the day following, that is, the 7th of June, evidence was taken and arguments were heard, the evidence being reported by an official stenographer, who was sworn before he entered upon the performance of his duties; fourth, from the evidence, all witnesses being sworn, they found the ownership of the land to exist in the parties heretofore mentioned, and that the value of the land had greatly increased during the last few years, first, owing to the establishment and existence of a provincial Government center in that exact neighborhood as evidenced by the erection of a provincial building and high school; second, by reason of the construction of dwellings for the most prominent persons of that locality in the

neighborhood of the Government buildings and the proposed railroad station; and third, because of the increase in the number of inhabitants. Even before the coming of the railroad, the commissioners found that values in this immediate vicinity, that is, in the immediate vicinity desired by the railroad, had equalled at least P2.00 a square meter according to the situation of the land, and this value existed even though at that time it was planned to erect the railroad station in an entirely different portion of the town. They found that a uniform valuation of not less than P4.00 a square meter was placed upon the land by the witnesses, but after considering the benefits which would accrue to the landowners through the installation of the railroad, and taking as a basis for their valuation the testimony of the only witness offered by the plaintiff railroad, the provincial fiscal of the province of Tayabas, they unanimously fixed the values at a maximum of 25 centavos less than the price estimated by the aforesaid plaintiff's witness. As a matter of fact they awarded Francisco Icasiano P2.00 per square meter for parcel 21, 16,094 square meters, which they found to be its price before the coming of the railroad; they awarded Messrs. Simeon Perez and Filemon Perez for parcels 21*a* and 21*b*, P3.50 and P3.75 per square meter, and they awarded Melecio Allarey and Deogracias Maligalig P2.00 per square meter for all of their holdings.

The differences in value they stated were due to topographical situation, the time of acquisition and the special advantages and disadvantages of the parties interested. For example, they took into consideration the fact that lot 21, owned by Francisco Icasiano, had been occupied by the railroad four years after the provincial Government was established. The high price for lot 21*b*, owned by Messrs. Perez, was due to the fact that it was situated between the provincial Government building and the railroad and is located on the road leading to the railroad station. The high price for lot 21*a*, also owned by Messrs. Perez, P3.50 per square meter, was due to the depreciation of the land remaining after the rail-

road had taken what it sought, in one case a strip of but 7 meters by 3.23 remaining. This same element of depreciation, because of the dimensions of strips left by the railroad, entered into consideration in the fixing of P2.00 a square meter for the rest of the lands. Finally, they found that Simeon Perez had been damaged to the extent of P600 by reason of his work upon his warehouse. This report was filed in the Court of First Instance of the 7th District on the 10th of June.

Thereupon, on the 20th of October, 1913, the Judge of the Court of First Instance of that District set the first day of November for the purpose of hearing testimony as to title in these lands, upon the allegation of plaintiff that ownership had not been legally established in the defendants (Rec., 12). On the 20th of November, 1913, the case came on for hearing, and on the 2d of February, 1914, the court, after a full consideration of the report of the commissioners already referred to, accepted and approved the said report (Rec., 15), holding that the values fixed therein were just and reasonable and finding also that the ownership of the various parcels of land involved in these proceedings now rested in one concern, known as the Tayabas Land Company, which had purchased parcel 21 from Francisco Icasiano on the 26th of May, 1913, before the report of the commissioners had been handed down (Rec., 82), and the balance of the property from the individual owners on the 1st of July, 1913, after the rendition of the commissioners' report (Rec., 68 to 81 inclusive).

Judgment was therefore ordered in favor of the Tayabas Land Company against the Manila Railroad Company in the sum of P81,412.75, with interest at the rate of 6 per cent per annum from the taking of possession of the lands expropriated by the plaintiff until the said amount is paid. On the 9th of February the plaintiff filed a motion for a new trial, excepting to the judgment of the court on the ground that the values found by the commissioners and approved by the court were greatly in excess of the actual value of the

lands and for other reasons therein alleged (Rec., 17). The defendants also moved for a new trial on the ground that the decision was openly and manifestly contrary to the weight of the evidence (Rec., 18). These exceptions and motions for a new trial were both denied the 26th of February, 1914, by the judge of the Court of the First Instance of the 7th District, and on the 8th of April, 1914, the same judge approved the bill of exceptions already filed by the parties to the cause (Rec., 19).

The case was submitted to the Supreme Court of the Philippine Islands on January 12, 1915 (Rec., 87), and on November 23, 1915, the court handed down an opinion modifying the decision of the Court of First Instance as to the value of the lands expropriated and reducing the net amount allowed defendants, exclusive of the P600 awarded Simeon Perez which was approved, from P81,412.75 to P13,611.69, interest remaining as fixed by the Court of First Instance, that is at the rate of 6 per cent per annum from the taking the possession until paid. From this decision of the Supreme Court – – – which found no prejudice, partiality or dishonesty among the commissioners who made the original award, but held that they had based their assessments of values upon erroneous legal principles, and which took as its basis for valuation a sale made in bulk by one of the parties to the cause, six months prior to the institution of these proceedings by the railroad company, despite the fact that the purchaser thereof one month after the purchase, disposed of the same property for twice the sum paid by him and despite the fact that the value so fixed by the Supreme Court of the Philippine Islands was directly opposed to the unanimous opinions of all the witnesses for the land owners and the sole witness for the railroad – – – a petition for a writ of error to the Supreme Court of the United States was filed on the 20th of March, 1916, by the Tayabas Land Company, successor in title to the individual owners of the land desired by the railroad company (Rec., 112), and was granted by Judge Trent on the 29th of August, 1916 (Rec.,

117-118). Thereupon a petition for the allowance of an amended writ of error was filed by the Tayabas Land Company aforesaid on the 25th of August, 1917 (Rec., 122-123) assigning as errors the following:

> **1. The Supreme Court of the Philippine Islands erred in holding as a matter of law that the plaintiff in error was not entitled to recover the amount fixed by the commissioners appointed to hear the evidence and view the premises as approved by the Trial Court under section 246 of the Code of Procedure of the Philippine Islands, as there was no "cause shown" so that the commissioners' report could be treated in the alternative as provided in said section.**
>
> **2. As a matter of law the Supreme Court of the Philippine Islands erred in setting aside the conclusions of the Court of First Instance based upon the weight and preponderance of the evidence as determined by the rule of evidence of section 273 of the Code of Procedure for the Philippine Islands, as the decision rendered by the Supreme Court of the Philippine Islands is not within the certain exceptions authorized to be reviewed under the procedure of the Supreme Court of the Philippine Islands, as provided in section 497 of its Code of Procedure.**
>
> **3. The conclusion of the Supreme Court of the Philippine Islands as to the liberal value of the land in question is based upon incompetent evidence and erroneous conclusions of law.**

This petition was duly allowed the 29th of August, 1917, by Judge Carson of the Supreme Court of the Philippine Islands, and is now before this court for hearing, the necessary affidavit of value of the amount in controversy having been filed by the Tayabas Land Company, the appellant here (Rec., 124) along with the bond required by law (Rec., 124).

## ARGUMENT.

The prime question involved in this entire case is in its last analysis one of value, that is what is a fair value of the land taken by the railroad company for its railroad station at Lucena. The legal questions raised by the writ of error rest chiefly upon this question of fact, and the question of value will therefore be considered first, namely the third error assigned (Rec., 123).

### III.

**The conclusion of the Supreme Court of the Philippine Islands as to the liberal value of the land in question is based upon incompetent evidence and erroneous conclusions of law.**

In the natural course of events the first question which arises is: What was the evidence which lead the commissioners after viewing the land to make a unanimous report, and the Court of First Instance unhesitatingly to confirm this recommendation?

The record is short and remarkably free from confusion. In all, ten witnesses appear, of whom nine were offered on behalf of the land-owners and the one by the railroad company. Of the former two were directly interested in the land itself by virtue of ownership of some portions of acreage desired by the railroad, the remaining seven being citizens of Lucena and the surrounding neighborhood, and being variously an ex-governor of Tayabas, an attorney-at-law, a clerk, a pharmacist, a lumberman, and two residents of Lucena, past sixty years of age. The tenth man, that is the witness for the railroad, was an attorney, and the provincial fiscal for Tayabas. A marked peculiarity regarding the proceedings is worthy of comment at this point since it bears upon the decision of the Supreme Court which upset and overturned the recommendation of the commissioner, approved by the Court of First Instance. No objection whatsoever was made by the

attorney for the railroad—although he was present during the entire proceedings before the commissioners and cross-examined all the witnesses—to any of the testimony offered; in no case did he insist that their technical qualifications as judges of real estate values be ascertained before permitting them to proceed, and he made no objection whatsoever to any of the testimony offered by any of the witnesses. Furthermore at the conclusion of the hearing he made no effort to have the testimony of any single witness stricken from the record because of failure to qualify or for any other reason; and when the report of the commissioners had been presented to the Court of First Instance and approved by it, the railroad did not give the slightest intimation (Rec., 17) that it had been surprised, or failed to present all the evidence upon its side of the question, or desired to offer new evidence. The railroad is compelled to concede then that a full, fair, and open hearing took place, and that the evidence submitted was the true and honest expressions of opinion of the witnesses interrogated.

A close examination of all of these witnesses including the railroad's sole representative shows striking unanimity as to value. From a minimum of P3 to P4 a square meter the value tentatively placed upon the land by the railroad witness, Mr. Cayo Alzona (Rec., 48), to the price for which one of the witnesses sold certain land near the center of the town, more than P10 per square meter (Rec., 41), the testimony varies, but in no case is the value placed lower than P3 square meter. It is evident therefore that in arriving at their conclusion the commissioners very wisely and judiciously took into consideration the possibility of what the Supreme Court of the Philippine Islands distinguishes as an incipient real estate boom and, even to the extent of disregarding the overwhelming weight of evidence presented to them, found values in no case greater than the lowest value placed upon the ground by any witness either *pro* or *con*. Of the 33,700 square meters expropriated at least 24,500 received no higher valuation than P2.00 per square meter (Rec., 10),

and the balance were held by the commissioners at P3.50 or P3.75 per square meter for reasons very definitely and clearly set forth in the record (Rec., 10).

Now it is of course important what character of evidence made up the testimony upon which the commissioners based their finding. Of the witnesses directly interested in the land, nothing will be said save where their testimony aids in clearing up disputed points of location, etc. Of the remaining witnesses for the land-owners particular attention should be paid to and more than ordinary consideration be given to that of Mr. Primitivo S. Agustin, Governor of the entire Province of Tayabas, in 1910, when he resided in Lucena, which was the provincial center, and since that time chief of an important department of the Philippine Government, and at present one of the judges of the Court of First Instance.

Mr. Agustin was not only a land-owner but was qualified to express an opinion upon values. In answer to the direct question qualifying him as an expert:

> "Do you particularly know the values of real property in the vicinity of the provincial government building and the Lucena station?" (Rec., 39.)

he said:

> "Yes sir, all the more because my house is situated nearby between the Government building and the station."

In other words he not only knew the values of ground in the neighborhood of the railroad station, but himself owned property directly bordering on this station, between the station and the Government building. He fixed the market price of the land desired by the railroad company at from P5 to P8 per square meter (Rec., 39):

> "Because the lot on which I built my house and which I acquired in 1910 cost me nearly P2 per square meter; and in view of its importance now,

owing to the coming of the Government and the railroad—if I was offered P8 I would not sell part of my land." (Rec., 39.)

He then expressed his willingness to buy land in that immediate vicinity at from P5 to P8 per square meter.

The outstanding features of this sworn testimony by a man who at the time he bought the land concerning which he is now testifying was the Governor of the province, is the fact that the price he paid in 1910, P2 per square meter, that is at least *three* years before the railroad instituted its proceedings for the expropriation of the land at issue was the price which the commissioners held was the value of the land *in 1913* to the extent of at least two-thirds of the amount taken by the railroad.

His testimony also revealed certain interesting information regarding the Government buildings and the length of time they had existed in Lucena which will be commented upon later in connection with the decision of the Supreme Court of the Philippines. Suffice it to say now that his testimony shows that in 1910 when he paid P2 a square meter for land in the exact vicinity of the land expropriated by the railroad in the present proceedings, the railroad company then contemplated placing the station upon the other side of the town, that is, near the cemetery (Rec., 40) - - - evidence first that the value of P2.00 in 1913, three years later when the railroad station was located in that exact neighborhood was extremely conservative, and evidence also that the location eventually adopted by the railroad must have had peculiar local advantages over other locations in Lucena, since plans were changed in order to place the station where it now is. Finally it is to be noted also that Mr. Augustin's lot is 46 by 42 meters, that is, 149.5 ft. by 136.5 ft., in no sense a section of ground too small to be available for building lots.

The testimony of Mr. Simeon Perez (Rec., 35) establishes the fact that even without the railroad station there was a

demand in that exact neighborhood for homes by Government employees, since he testified that the house he had been constructing either to be finished as a warehouse or as small apartments, would have been rented by Government employees. The effect of this testimony clearly is to show that in the neighborhood of the railroad station there was certainly a demand for property.

Mr. Eulalio Garcia, an attorney-at-law residing in Lucena, qualified as a judge of land values in the municipality of Lucena and particularly close to the railroad station (Rec., 40). He placed the market value of land in the immediate vicinity of the railroad and the provincial government building at P7.00 per square meter more or less and based his opinion upon the fact that to his personal knowledge one Anbras Dinlasan sold a small lot in that neighborhood at P10.00 per square meter. Mr. Dinlasan subsequently was sworn and testified to the same effect. Mr. Garcia further stated that the current market price of land in that immediate vicinity was at least P6.00 per square meter.

Mr. Dinlasan, referred to in the preceding paragraph, who sold land in Lucena for more than P10 per square meter, described the sale (Rec., 41) and stated that the lot was only about 120 square meters, the price being slightly over P10 per square meter. He added that there was no building on the ground and that while the lot was in the business district of Lucena it was not located where there was much traffic. Mr. Estebon Lagos, the next witness, testified that he owned property immediately alongside the house of Mr. Perez, one of the original parties to the cause about 250 meters from the provincial building, in other words in the immediate vicinity of the Government lands and the railroad, and that he acquired this land in 1910 and 1911. He owns two lots, presumedly adjoining, upon one of which his house is constructed. The other lot, 16 by 18 meters, was purchased in 1911 and cost him P1,000 or somewhat over P3 per square meter. He valued land in the immediate neighborhood of that taken by the railroad at P5 per square meter, but it is

fair to add that he expressly disclaimed anything more than general knowledge of the land in the neighborhood of the station (Rec., 42).

The testimony of Mr. Ambrosio Zaballero (Rec., 43) revealed that before the railroad came the land upon which the station was constructed was merely a paddy field worth in his opinion P300 per hectare or P.03 per square meter. His testimony clearly was influential in causing the Supreme Court to conclude that it was the railroad solely which raised the character of land in Lucena near the railroad station from that of farm land to urban residential sites, but it is to be particularly noted that his testimony does not show when the railroad came to Lucena and in no sense contradicts the testimony of ex-governor Agustin that the land had attained a definite commercial value because of the Government buildings at Lucena, long before these proceedings began.

The testimony of Melecio Allarey (Rec., 44), one of the defendants to the suit, is interesting only because of the deductions from his testimony developed by the Supreme Court in its opinion (Rec., 100), whereby the Supreme Court concluded that his valuations must be far in excess of actual conditions in view of his ambiguous and evasive replies and the "apparent" surprise to him of his own financial worth if his estimates of value were correct. Needless to say the testimony of Mr. Allarey neither adds nor detracts from the record and neither proves nor disproves a single fact offered as evidence therein.

The testimony of Mr. Anastasio Edrad (Rec., 45) supported the statement of Ambrosio Zaballero (Rec., 43) that before the railroad came the land where the station now rests was rice land, although he testifies that for sometime prior it had evidently not been cultivated. He also does not specify when the railroad came, but he does state under oath that in his opinion before the railroad came the land in the vicinity of the station might be classed as "number one" in view of the fact that *it was near the center of the town* and

could be used either for building purposes or agriculture. What he meant by "number one" land the record does not show, but he does state that lands within the jurisdiction of Lucena—and this of course includes all the land in question in these proceedings—cost at the rate of about P1,000 per building lot of 20 meters square, that is, about P2.50 a square meter, and "this at a distance from the Government headquarters."

This portion of the record concludes with the evidence offered on behalf of the plaintiff, the railroad company. This evidence, as has already been stated, consisted of the testimony of but one witness, Mr. Cayo Alzona, a resident of Lucena, and the municipal attorney. He owns two adjoining parcels of land purchased by him, one in 1906 or 1907 and the other in December, 1912 (Rec., 47), the latter being presumedly about 200 meters from the railroad station, the record in this instance failing to specify the measurement but stating that it is 200 (?) from the station. His land bought in 1906, 2,200 square meters, cost him about P.16 per square meter and that bought in 1912 cost him a little more than P.15 per square meter. He testifies, however, that lots adjoining the Government lands, which of course means the land upon which the provincial buildings are situated and only a short distance from the railroad station, are held at from P500 to P700 a building lot 20 by 20 meters or from P1.25 to P1.75 per square meter. In regard to his own land he also adds that the value has increased since he purchased it for two reasons, first, the construction of the provincial building and the high school, and second, because of the railroad station. From his method of testifying it is self-evident that the provincial building and the high school came before the railroad and were themselves decided elements in the rise of value in lands in that part of Lucena. There is nothing to show whether prices paid by Mr. Alzona himself were fair or were below the market, suspicion pointing to the latter conclusion, since he testifies (Rec., 48) that the land purchased on the street was bought from an American "who had to go to

America." The meat of his testimony rests in his answer to the question:

> "Suppose that the land (his own land located near the Government building and railroad station) belonged to another person and you wanted to buy it at public auction, how high would you bid per square meter?"

Answer:

> "If I were a merchant perhaps I would be inclined to pay as much as P3 to P4 per square meter; but as I am not I would not venture to pay that price."

It is this statement of Mr. Alzona which justifies the landowners in claiming that his valuation for the land taken by the railroad must be at least from P3 to P4 a square meter, for the answer given by him just quoted above did not apply to residential lots in the most valuable portions of the land expropriated by the railroad, but referred to his own land, the most of which was at least 200 "meters" from the railroad station. I supply the word "meter" for the omission in the record. Under no conditions can his testimony be tortured into any conclusion other than that land taken by the railroad for the railroad station was worth at least from P3 to P4 per square meter.

With this testimony before them the commissioners after having the day before gone over the land, as they stated, "inch by inch," found that the basic value of the land taken by the railroad was P2.00 per square meter and made their decision accordingly, allowing a somewhat greater price in two instances (Rec., 10) because of the irregular and useless sections of land left by the railroad after it had appropriated that which it considered necessary. One special choice piece known as parcel 21*b*, which was owned by one of the Perez defendants, was valued at P3.75 per square meter, the top price in the opinion of the commissioners for land in that vicinity, this lot being located between the provincial

government building and railroad and situated on the main highway and the road leading to the railroad station. The commissioners therefore refused to take as a fair valuation the estimates given by all the witnesses, even though these estimates were based upon actual personal purchases and sales, and even though in every case the witnesses placed higher valuations than that awarded by the commissioners. The P2.00 per square meter basis adopted by them was the price paid by ex-governor Agustin at least three years prior to the institution of these proceedings for land between the railroad station and the Government building and before the railroad had determined to construct its station at the present location and when its contemplated location was near the cemetery in another part of the town.

It will be noted that the evidence is in complete accord with reference to the value of the land to the extent of at least establishing that it was regarded by all of the witnesses to be more valuable than the amount allowed by the commissioners. It will be noted also that in no single instance is it testified to by any single witness that the railroad alone caused the increase in the price of the land over and above what it might have brought as agricultural land before the railroad came. On the contrary, the testimony seems conclusively to show that the coming of the railroad was but one element in the appreciation of the land, whether the greatest or not it does not appear; and it goes on further to show that the coming of the railroad was spread over a period of several years, and that the appreciation in value was also spread over a period of years, so that it cannot be said that the sudden decision of the railroad to enter Lucena or to establish its station where it eventually did was the inspiration to send values soaring. Although testimony appears in support of the supposition that the land as agricultural land was worth only a tithe of the land as residential property, nowhere is there a single definite statement made or is there any definite evidence offered to prove that an overnight upheaval in values occurred when the railroad began its pro-

ceedings to secure the land. It must always be kept firmly in mind that these proceedings did not begin until January, 1913, and that as many years prior as 1910 it was known that the railroad was coming to Lucena and that a station would be built there, although the location was then planned in another part of the town. Furthermore, the evidence as to sales in the neighborhood of the railroad station is sworn to, is clear and is convincing and is not refuted by a word of testimony offered by the railroad.

With such a record before us, it is not a difficult matter to apply the law. The law relating to condemnation proceedings is no different in the Philippine Islands than in the majority of States. A copy of the appropriate sections is appended hereto as a note.[1] It will be seen that the procedure fixed by the law is practically the same as that enforced throughout the United States, save that of course no

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[1] SEC. 241. How the right of eminent domain may be exercised.—The Government of the Philippine Islands, or of any province or department thereof, or of any municipality, and any person, or public or private corporation having by law the right to condemn private property for public use, shall exercise that right in the manner hereinafter prescribed.

SEC. 242. The complaint.—The complaint in condemnation proceedings shall state with certainty the right of condemnation, and describe the property sought to be condemned, showing the interest of each defendant separately.

SEC. 243. Appointment of commissioners.—If the defendant concede that the right of condemnation exists on the part of the plaintiff, or if, upon trial, the court finds that such right exists, the court shall appoint three judicious and disinterested land-owners of the province in which the land to be condemned, or some portion of the same, is situated, to be commissioners to hear the parties and view the premises, and assess damages to be paid for the condemnation, and to report their proceedings in full to the court, and shall issue a commission under the seal of the court to the commissioners authorizing the performance of the duties herein prescribed.

SEC. 244. Duty of commissioners.—Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath before the judge, or clerk, or any justice of the peace for the province, that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence under oath may be introduced by either party before the commissioners, who are hereby authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, go to the premises together and view the property sought to be condemned and its surroundings, and

jury exists in the Philippine Islands. The appointment of the commissioners who appraise the lands and the various steps in pursuance thereof are hedged in with the same general retrictions as exist elsewhere. The commissioners are required under section 246 to find the just compensation to which the landowner is entitled and the person or entity that desires the land has every opportunity to present its own witnesses, cross-examine the witnesses offered by the landowners, and take every step deemed advisable to protect its interests, even to the extent *of dismissing the proceedings and endeavoring to secure other land.* As the Supreme Court well observes in another connection (Rec., 109), no reason whatsoever exists why the railroad company in this case would not have dismissed the proceedings under clause four of section 127 of the Code of Civil Proceedings of the Philippine Islands.

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may examine and measure the same, after which either party may, by himself or counsel, or both, argue the cause. The commissioners shall assess the value of the property taken and used, and shall also assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owners from the public use of the land taken, or from the operation of its franchise by the corporation, or by the carrying on of the business of the corporation or person taking the property: *Provided*, The consequential benefits assessed shall in no case exceed the consequential damage assessed; *Provided further*, That nothing in this section shall be so construed as to deprive the owner of the actual value of his property so taken or used.

SEC. 245. Report of commissioners.—The commissioners shall make full and accurate report to the court of all their proceedings under their commission; but none of their proceedings shall be effectual to bind the property or the parties until the court shall have accepted their report and rendered judgment in accordance with its recommendations.

SEC. 246. Action of court upon commissioners' report.—Upon the filing of such report in court, the court shall, upon hearing, accept the same and render judgment in accordance therewith; or for cause shown, it may recommit the report to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part, and may make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken; and the judgment shall require payment of the sum awarded as provided in the next section, before the plaintiff can enter upon the ground and appropriate it to the public use.

The question of just value, or in other words of the fair market value, has been passed upon repeatedly by the courts. The Supreme Court in its decision has cited various authorities, with which we agree and which satisfactorily set forth the law. We refer to the citations from the opinion by the Supreme Court of the United States in Boom Company *vs.* Patterson, 98 U. S., 403, cited on pp. 105 and 106 of the record, and the cases on page 106 of the record, including the citation from Lewis on "Eminent Domain," second edition, section 478.

To the above may be added the statement in City of Manila *vs.* Corrales, 32 Phil. Rep., 92.

> "In taking private property for public use under the power of eminent domain, the persons whose property is thus taken should be paid the reasonable market price of their property. * * * When we speak of the market value of property taken under the power of eminent domain we mean the value which purchasers generally would pay for it. * * * The owner has a just right to its value for the use for which it would bring the most in the market."

The Supreme Court of the Philippines seems also to understand the weight which is to be given the report of the board of commissioners who have personally inspected the land and who have heard the witnesses, although in applying this knowledge the Supreme Court deliberately overlooked the other principles which it had so earnestly held to be correct. In its opinion (Rec., 98) it stated:

> "The commissioners are required by law to be disinterested landowners of the province, selected by the court with a view to their ability to arrive at a judicious decision in the assessment of damages. The judgment of men with these qualifications upon the price of real property is entitled to some considerable weight. Being local men, it may be assumed that they are familiar with the local land values, the needs of the community in that line, and the adaptability of particular sites to commercial purposes. Then, too,

their view of the premises enables commissioners to better understand the evidence submitted to them, as we have said above. The declarations of witnesses as to the value of the land, as to its condition, or the conditions of improvements which may be located upon it, and comparisons made between the condemned land and other land in the vicinity may all be better understood by the commissioners if they have viewed the premises. It is, *therefore, no slight divergence* from the seeming preponderance of the evidence of record, as viewed by the court, which will justify the court in brushing aside the commissioners' report and appraising the property itself, based only upon a perusal of the evidence which was submitted to them.

"That the estimated value made by the appraisers is to be given 'great weight;' that such valuation is not to be 'lightly set aside;' that it will not be set aside 'if there is substantial testimony to support it;' unless error is 'plainly manifest;' 'unless it is apparent that injustice has been done;' 'unless the commissioners have clearly gone astray or adopted erroneous principles;' 'unless the commissioners acted upon wrong principles, or their award is grossly inadequate;' unless the award is 'palpably excessive or inadequate;' unless it is 'grossly inadequate or unequal;' is the burden of all the cases."

In other words the report of the commissioners, if they have not refused to hear competent evidence material to the case, if no improper conduct, fraud or prejudice is charged and if correct legal principles have been applied to the evidence submitted to them, is practically binding upon a court of review which has no witnesses before it and has no evidence to consider other than that which was before the commissioners when they rendered their opinion. The general rule, which covers this case and which the Supreme Court of the Philippine Islands has recognized from the above citations and observations to be the law of the Philippine Islands, has been so clearly and explicitly set forth by the Supreme Court of the United States, that the one quotation following

will in the opinion of counsel be sufficient to fix the ruling under which the Supreme Court of the Philippine Islands could legally modify the decision of the Court of First Instance based upon the report of the commissioners, and will serve as a guide in the present proceedings. In the case of Shoemaker *vs.* United States, 147 U. S., 305, this court states:

> "If as we have said, the court below was right in refusing to restrict the commissioners to a mere consideration of the evidence adduced, then it would seem to follow that the court could not be legitimately asked, in the absence of any exceptions based upon charges of fraud, corruption, or plain mistake on the part of the appraisers, to go into a consideration of the evidence. The court cannot bring into review before it the various sources and grounds of judgment upon which the appraisers have proceeded. The attempt to do so would transfer the function of finding the values of the lands from the appraisers to the court. Such a course would have presented a much more serious allegation of error than we find in the objection as made * * *. The rule on this subject is so well settled that we shall content ourselves with repeating an apt quotation from Mills on Eminent Domain, 246, made in the opinion of the court below: 'An appellate court will not interfere with the report of commissioners to correct the amount of damages except in cases of gross error, showing prejudice or corruption. The commissioners hear the evidence and frequently make their principal evidence out of a view of the premises, and this evidence cannot be carried up so as to correct the report as being against the weight of evidence. Hence, for an error in the judgment of commissioners in arriving at the amount of damages there can be no correction, especially where evidence is conflicting. Commissioners are not bound by the opinions of experts or by the apparent weight of evidence, but may give their own conclusions.'"

This statement of law leaves very little for us to consider in the case save the force of the Supreme Court's contention

upon which was based its order of modification reducing the judgment from P81,000 to P13,000, and which in its own words, stated in the subjunctive, is as follows:

> "If, after making due allowance for the superior facilities which the commissioners had for arriving at the correct value of the property, the court is clearly of the opinion that the evidence relied upon by them is untrustworthy, and that other evidence rejected by the commission and which fixes the value of the property at a figure greatly at variance with their valuation of the property, bears the earmarks of truth, then it becomes the duty of the court to substitute for the commission's award the amount indicated by such evidence." (Rec., 98.)

This then is the sole question to be considered. The burden of the Supreme Court's contention is that the commissioners failed to give full weight to evidence which they should have considered and put faith in testimony which did not deserve faith. How it is possible for the Supreme Court of the Philippine Islands, without the witnesses before it, without the benefit of an inspection of the property, and in the face of the sworn statements of the witnesses before it in the record, to discover evidence which it holds as binding but which the commissioners disregarded and to throw out evidence which it holds should be disregarded but which the commissioners held to be binding, is an utter impossibility in the mind of counsel – – – emphatically impossible when the words of the Supreme Court of the United States upon this very question as set forth in the Shoemaker case above are before us. The Supreme Court of the United States holds to be good law the statement that an appellate court will not interfere with the report of commissioners except in case of gross error, showing prejudice or corruption. In this case, although gross error is alleged, not a breath of suspicion appears in the record concerning the character and reputation of the commissioners or the Court of First Instance. The Supreme Court of the United States in that

same case further approves the statement that commissioners "hear the evidence and frequently make their principal evidence out of a view of the premises, and this evidence cannot be carried up so as to correct the report as being against the weight of evidence. *Hence, for an error in the judgment of commissioners in arriving at the amount of damages there can be no correction, especially where the evidence is conflicting.*"

The evidence in this case is before the Supreme Court in the record and has been analyzed by counsel in more detail than should properly be the case, because of this very condition of affairs. It is needless to repeat again that there is absolutely no conflict in the testimony of all the witnesses who appear before the commissioners, and that any seeming conflict which may have occurred to the Supreme Court of the Philippines or any alleged divergence from the belief expressed by every single witness to the effect that the land today was worth more than was actually allowed by the commissioners, is an absolutely artificial construction of the evidence entirely unsupported by the facts and based purely upon the mythical idea in the minds of the judges of the Supreme Court of the Philippines that the railroad had suddenly determined to enter Lucena and build a station and that immediately overnight the value of land had jumped from P500 per hectare, or ten thousand square meters, to P50,000 per hectare, or P5 per square meter. Not only is it true that not a single item of the testimony legally and reasonably supports this conclusion, but the commissioners having viewed the premises and having seen the lay of the land and having learned of the existence of the provincial buildings long before the coming of the railroad, and having considered the sworn statements of reputable men who bought land before the railroad was first mentioned, and after it was mentioned, but before it had settled upon its location, unanimously found that the land *was not* agricultural land but was residential land, valuable, and worth assuredly as much in 1913 as the sworn testimony showed it was worth in 1910.

But since the Supreme Court has reversed the Court of First Instance and the commissioners upon this theory, its opinion must be considered and must be answered in so far as these statements of the testimony and the law have not already answered it.

Let me emphasize again the fact that the railroad company was entirely satisfied with the evidence offered, made no attempt to strike out any of the testimony and objected to none of the witnesses. Under such conditions the Supreme Court of the Philippines feels, and I quote from its decision on page 98:

> "It is no hardship upon any of the parties to require that the award must be based upon the evidence. *It is the duty of each party to submit what evidence of value he has, and if he fails to do so he cannot complain if the appraisement is kept within the bounds of the evidence presented to the commissioners.*"

Despite this clearly quoted and self-evident principle of law, the Supreme Court tartly reprimands the railroad company for the manner in which it tried its case and proceeded thereupon directly to reverse its statement of the law, hereinbefore just quoted, when it stated on page 102:

> "And while the commissioners' view of the condemned land undoubtedly assisted them in forming their estimate of value, still counsel should not have relied upon their astuteness to discover differences in values, but should have brought them specifically to the attention of the commissioners. It seems rather unusual, also, that the bare statements of witnesses should be accepted as to the prices which nearby parcels brought, in view of the insistence of counsel that the condemned land is nothing more than agricultural land. These sales should have been thoroughly investigated to determine whether they were made *bona fide* and, if so, whether they were attended by unusual circumstances which materially increased the purchase price."

Immediately preceding this statement the Supreme Court had said:

> "Aside from the bare fact that the real estate transactions referred to by the witnesses were somewhere in the vicinity of the condemned land, there is nothing to guide us as to the relative value of the condemned land."

The law did not require that the Supreme Court be satisfied as to each parcel of land and as to the property graduations in value; for if it had, the law would have provided that the Supreme Court be a commission to appraise the land. The law specifically called for the appointment of impartial residents of the vicinity who should inspect the land and hear the witnesses and who from such testimony and from their actual knowledge of the land as obtained by inspection and observation should and could determine whether the values given in evidence as a result of actual sales were a true representation of the values of the land, and what allowances if any should be made because of proximity or remoteness of lands sold in the open market as affecting the value of the lands to be expropriated. This the commissioners did to the best of their knowledge and ability and nowhere in the record does it appear that the sales of land called to their attention by the witnesses were not identified by them and were not available to them in their calculations of the value of the lands taken by the railroad. The record shows a very careful identity of the lands described by witnesses with the provincial buildings, railroad station, and the lands desired by the railroad. Not a single witness seemed to be at a loss to explain the location of the land upon which he based his opinion of value as compared with the location of the lands to be expropriated. The railroad attorneys had no difficulty whatsoever in understanding this testimony and in identifying the lands discussed, since no objection was made nor was any effort made more clearly to locate any parcel of land discussed in the case.

As a matter of fact, at one point in the proceedings it seems that the railroad company reached the conclusion that the award was well within the bounds of reason and was by no means so grossly excessive as it subsequently concluded, for there will be found in the record, on page 48, a paper designated as "memorandum of plaintiffs," which was filed July 18, 1913, or within six weeks after the report of the commissioners had been turned over to the Court of First Instance. This memorandum was in the nature of a protest of the railroad company against the report of the board of commissioners, but concluded with these very pointed words (Rec., 50), *"nevertheless, the plaintiff (the railroad company) in consideration of the fact that if the report of the commissioners be rejected it will result in damages to both the plaintiff and the defendants, prays the court to approve the said report."*

This paper, which amounts to an agreement praying judgment, was filed in Manila and was signed by the attorneys for the railroad. It must therefore have received due consideration before submission and since every pleading must be taken most strongly against the pleader, it must be presumed that in this prayer for judgment the railroad was satisfied to settle the case upon the lines of the commissioners' report. A month later, however, it suffered a change of heart, for on August 11, 1913, it amended this pleading, if it is a pleading, by praying that the report of the commissioners should be disapproved. While, of course, this prayer for judgment, immediately afterwards followed up by a prayer for the disapproval of the award, has no particular effect upon the case, it is strongly persuasive in ascertaining the real attitude of the railroad company towards the judgment and demonstrates beyond a shadow of a doubt that in its opinion the recommendation of the commissioners was so close to the actual values of the land that it was more profitable for the railroad to accept the judgment than to delay the proceedings by an attempt for a new trial, even though it might well feel assured that the judgment would be materially reduced.

The Supreme Court of the Philippines in its opinion showed a thorough knowledge of the law of compensation and the basis upon which values should be determined. Yet, when applying the principles, though forcibly stated, the court adopted a most peculiar standard and one that cannot be supported on any principle of law or equity. It happended that one Romana Velasquez had sold parcel 21, which contained 16,094 square meters, to Filemon Perez, her grandson, on the 21st of July, 1912, for the sum of P6500 (Rec., 29). Perez held the property exactly 26 days, for on the 16th of August, 1912, he sold the same to Francisco Icasiano for the sum of P13,000 (Rec., 52). This, of course, occurred five months before the railroad company instituted its proceedings. With these facts before it and without considering circumstances which will be commented upon in the next paragraph, the Supreme Court arrived at the conclusion that the sale on July 21st was a true and proper valuation of the property involved, since it was a free and open sale between two parties, the vendor of whom was not compelled to sell and the vendee being not compelled to buy! Therefore this sale was adopted by the Supreme Court as the true measure of damages when modifying the report of the commissioners (Rec., 108), despite the fact that immediately before it the Supreme Court had the record of the sale by Filemon Perez 26 days after the purchase, which the Supreme Court took as a standard of value, *for a price exactly double* that which he paid. It is indeed an interesting question how the Supreme Court reconciled its decision with these facts. The Supreme Court remarks in this connection:

> "We are, therefore, led to the conclusion that the price at which practically half of the condemned land was sold by Romana Velasquez to the defendant, Filemon Perez, is a most liberal estimate of its value. We refer to her sale of the parcel of 16,094 square meters for P6,500. This parcel comprises practically one-half of the entire station site and no outside land was included in the transaction. The sale was made after it became known that the land sold was to be part of the station site, and a statement to this effect was

included in the deed. Both parties being aware that the land was to be condemned by the plaintiff company, it cannot be said that they were not aware of all the latent utility of the land. For these reasons, the price which this parcel brought should serve as an excellent criterion of the value of the entire site. And while no explanation is given of why the sale occurred, since, of course, no one would buy it with the expectation of using it himself when he knew that it would shortly be occupied by the railroad company, still there is not sufficient indication that it was sold for speculative purposes or that the element of speculation entered into the transaction to enable us to say that the price was inflated and exceeded the actual market value of the land." (Rec., 108.)

But the whole tale of this so-called "evidence" is not yet told. The information regarding the sale by Romana Velasquez on the 21st of July, 1912, was not obtained by the Supreme Court from the record of evidence, but was the result of an examination of certain deeds which were offered in evidence for the sole purpose of proving title. It will be remembered that before the Court of First Instance considered the report of the commissioners it consented to plaintiff's prayer that title to the land must be satisfactorily proved before judgment and for that reason on the 20th of October, 1913, set the first of November for hearing upon this question and this question alone (Rec., 12). This hearing took place on the 20th of November, and thereafter, and there were introduced a number of deeds to the various parties defendants for the sole purpose of proving ownership (Rec., 29, 30, 50, 52, 62 to 86, inclusive), supported by the evidence of the various parties in interest (Rec., 53). Not a single one of these deeds was before the commissioners when their report was made. As a matter of fact, a great number of the deeds, that is, all except one of the deeds to the Tayabas Land Company were executed *after* the decision of the commissioners.

There are therefore two legal principles involved in the consideration of these deeds by the Supreme Court. **The first**

**is that it is a general rule of law too well recognized to require authorities, which holds that in condemnation proceedings evidence not presented to the jury or commissioners cannot be considered.** The citation from the Shoemaker case, page 21, *supra*, fully covers this contention and there is nothing in the Philippine law or practice which changes the rule. Therefore all the deeds which were commented upon by the Supreme Court and the deed in particular which the Supreme Court used as a basis for its finding of value are not properly before it, cannot properly be considered by it, and have no part in the question of compensation.

**The second principle of law is that evidence which has been offered for a specific purpose cannot be used for another purpose where no opportunity to examine or cross-examine witnesses is afforded.**

It is clearly evident from the proceedings in the case and from the examination of the witnesses (Rec., 53, etc.) that these deeds, including the deed from Romana Velasquez to Filemon Perez, were produced purely for the purpose of title, any doubt upon this point being settled by the character of the stipulation (Rec., 46) entered into between the parties and by the fact that no reference whatsoever was made to them in the hearing before the commissioners by the attorney for the railroad other than this stipulation above.

As evidence of the value of the lands conveyed these deeds are worthless; and even if under any construction they can be considered, the Supreme Court has clearly exercised an arbitrary and grossly inequitable rule of application. Comment has already been made upon the sale of the land bought by Perez for P6,500 and sold by him for P13,000, 26 days after the purchase. Far more important in consideration of values are the deeds of the various defendants to the Tayabas Land Company, which received the consideration of the Supreme Court (Rec., 103-104), although the court refused to recognize that the values therein stated were entitled to recognition. By these deeds the various defendants sold their lands to the Tayabas Land Company at a price of P1.05

per square meter, except Simeon Perez, who received P2.27 and P2.11, respectively, for two parcels (Rec., 103). The Supreme Court appreciated the fact that these deeds were not before the commissioners (Rec., 103) and taking the deeds to the full extent of their contents expressed surprise that the defendants were willing to sell their lands for approximately one-half of the amount of the award of the commissioners. It is true that nothing but speculation entered into these transactions, since the land was already expropriated by the railroad and could not possibly be used by the Tayabas Land Company. As the Supreme Court said, "it was merely a sporty guess" upon the part of the company that the award would eventually be greater than the amount they paid, and the defendants could not resist the cash actually offered. However, there is absolutely nothing to show that the consideration named in the deeds was the true consideration. No witnesses were examined and no persons testified to the fact. Furthermore, there is absolutely nothing in the record to show the composition of the Tayabas Land Company. As far as we know this company might very well consist of these self-same landowners who sold to the company, as stock holders. It is not at all impossible to believe that some person or corporation may have advanced the amount specified in the deeds to the landowners and also given them stock in the company, the landowners relinquishing a part of the price which they would receive under the award of the commissioners in consideration of the cash payment given them by the company, and in consideration of the fact that it would probably be several years before the case was decided. These possibilities merely emphasize more clearly the impossibility of considering any of the deeds as evidence of value, irrespective of the principles of law which prevent their consideration.

Nothing could be more appropriate in our endeavor to establish this contention beyond a shadow of a doubt than to prove its force out of the mouth of the Supreme Court of the Philippine Islands itself. Indeed, there is probably no

court in the world which better knows that deeds of this sort cannot be considered proof of value than this same Supreme Court of the Philippine Islands. In the case of Manila Railroad *vs.* Fabie, 17 Phil. Rep., 206, which was a proceeding similar in character to the present case, the only evidence presented to the commissioners who were appointed to assess the value of the land were certain deeds of sales of property in that vicinity. Upon appeal from the judgment of the Court of First Instance, the Supreme Court ruled that the commissioners had made their award upon insufficient evidence and handed down an opinion containing these potent words which conclusively settle the fate of the deeds offered for purposes of proving title in the present case:

> "The only evidence in the record to support the finding of the court below as to the value of the land, as he found it, is that taken before the commissioners which consists solely of the documents aforesaid mentioned and that taken by the court upon the hearing. * * * *Deeds showing transfer of land in the locality in question and the price at which such land was transferred, standing alone, are wholly incompetent as evidence of value, even though such deeds contain the price for which the land sold.*"

In concluding the discussion of this third assignment of error, attention should be called to the Supreme Court's comment upon the attitude of the Court of First Instance. We quote from record, 99:

> "Let us now examine the evidence, keeping these legal principles in mind. The only discussion of the evidence of value made by the lower court was as follows:
>
> "To determine this question (the value of the land) the court abides by and refers to the report of the commissioners dated July 10, 1913, because it understands that it *must* accept this report in all its parts for the reason that the prices fixed in the said report of P3.75 per square meter for parcel 21*b;* that of P3.50 per square meter for parcel 21*a*; and that of P2 per square meter for the rest of the parcels (nam-

ing them), are reasonable and just; the compensation which is made in the said report for the damages occasioned to the defendant Simeon Perez being also reasonable and just.'

"It will be seen that the lower court relied entirely upon the findings of the commissioners."

A careful examination of the record fails to disclose any assertion on the part of the Court of First Instance similar in intent to that quoted by the Supreme Court and held by them to show that the Court of First Instance relied entirely upon the findings of the commissioners because it felt it *must* accept their report. What the Court of First Instance said in this connection follows:

> "In order to decide this question the court relies upon the report filed by the commissioners and dated the 10th of July, 1913; it is of the opinion that the said report should be accepted in all of its parts because it is based on the result of the evidence; that the values fixed in the said report are just and reasonable, to wit: P3.75 per square meter for the parcel 21*b*, P3.50 per square meter for parcel 21*a*, and P2.00 per square meter for the rest of the parcels 21, 22*a*, 22*c*, 22*d*, 22*e*, 23*a*, 23*b*, 23*c*, and 23*d*, and that the valuation made in the report referred to with regard to the damages actually caused to the defendant Simeon Perez is reasonable and equitable." (Rec., 15.)

It is a very different thing to say that the Court of First Instance approved the report of the commissioners because it felt it must do so under the law and to say that it did so because it believed the report was fair and equitable and was based upon the result of the evidence. In other words, the Supreme Court's opinion is squarely opposed to the decision of the Court of First Instance and is squarely opposed to the interpretation by the Court of First Instance of the report of the commissioners.

The Supreme Court discussed from its point of view the report of the commissioners and the reasons given by the

commissioners for their valuation (Rec., 99 *et seq.*). It doubts the *bona fides* of the sales of land offered in evidence to prove value and already discussed in detail, because it claims that the lots sold are in most cases too small to be of any use (Rec., 100). It will be noted, however, that of all the sales of land but two are substantially below 400 square meters and of these one at least was a purchase by the vendee to extend the lot which he already owned. It appears from the record (pages 26 and 27) that the standard lot is 20 meters square, so that the purchases in evidence are by no means all purchases of lots too small to be valuable.

No support appears in the record for the statement of the Supreme Court (Rec., 106) that as a residential site this portion of Lucena had proved a complete failure and that no residences had been constructed on any part of the condemned land. The testimony does show that ex-governor Agustin (Rec., 39) had a house in the immediate vicinity; that Simeon Perez (Rec., 35) was constructing a warehouse which he stated could be used for small apartments and for which he was granted damages; that Esteban Lagos owned two lots in that immediate vicinity, upon one of which was a house (Rec., 42); that Mr. Perez had a house in that neighborhood (Rec., 42) and finally that the railroad witness had a house in that neighborhood (Rec., 47). These facts are merely offered to show how carelessly the Supreme Court must have read the record; for of course any observations upon the lack of houses on the condemned land is entirely improper in the absence of any evidence tending to show why no houses had been constructed thereon. Certainly houses were built around the land, and the conclusion therefore of the Supreme Court that as a residential site the value of this condemned land was problematical (Rec., 107) is directly opposed to the report of the commissioners who actually viewed the land and to the reasonable deductions therefrom.

The conclusion of the Supreme Court (Rec., 107) to the effect that this land had no special value as a railroad station

again is not borne out by the record, for as the Supreme Court knows, the railroad company had at sometime prior selected another part of the town, but changed its plans, which must have been simply because the new location offered better advantages to the company. Finally the Supreme Court in discussing the statements of witnesses concerning the price they would offer for land in the vicinity of the railroad station (Rec., 107), which it properly holds is not evidence of value, entirely disregards the sworn testimony of actual sales in this vicinity and in the neighborhood which have already been commented upon and which were before the commissioners when they made their award.

## II.

**The Supreme Court of the Philippine Islands erred in setting aside the conclusions of the Court of First Instance, based upon the weight and preponderance of the evidence under sections 273 and 497 of the Code of Civil Procedure for the Philippine Islands.**

The Code of Civil Procedure for the Philippine Islands provides a fixed and definite rule by virtue of which decision of the Court of First Instance may be reversed or modified by the Supreme Court of the Islands. The specific section, namely 497, as amended by act 1596 enacted February 25, 1907, provides as follows:

> Sec. 497. Hearings confined to matters of law, with certain exceptions.—In hearings upon bills of exception in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section hereinafter provided; but shall determine only questions of law raised by the bill of exceptions. But the Supreme Court may review the evidence taken in the court below and, after giving

due weight to the fact that the judge who tried the case saw the witnesses when they testified, affirm or reverse by a preponderance of the evidence, or modify by such preponderance, the judgment there rendered, as justice may require, in the following cases:

(2.) If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment, as justice and equity may require.

Formerly section 497 permitted reversal or modifications of judgments, "as justice may require," without restricting the Supreme Court to the reversal or modification by "a preponderance of the evidence." In other words, the purpose of the amendment was to limit and bind the hands of the Supreme Court in place of the unrestricted right of review formerly possessed, and the amendment emphatically requires that any alteration of a judgment of a Court of First Instance must be based upon a preponderance of the evidence and not upon a construction of the evidence by the Supreme Court. The intent of the law being so clearly expressed, this honorable court must be satisfied that the modification by the Supreme Court of the Philippine Islands of the decision of the Court of First Instance in the present case is based upon a preponderance of the evidence. What is meant by preponderance of evidence is clearly set forth by section 273 of the Code of Civil Procedure:

Section 273. Preponderance of evidence, how determined.—In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying,

> their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of the witnesses, though the preponderance is not necessarily with the greatest number.

In order for the question of preponderance to be raised, there must be some conflict between the statements of the witnesses. In this case the witnesses have unanimously and consistently valued the property at issue at a greater sum than that allowed by the commissioners. There is therefore no conflict whatsoever in their opinion, regardless of how effective this opinion may be. There is no conflict between them as to the character of the land, for nowhere in any instance was a witness asked to specify the exact time when the railroad came and the exact time when the lands changed from agricultural land to residential land. On the contrary, there is clear and substantial testimony to show that this section of Lucena was a residential section and not an agricultural section at least three years before the railroad brought these proceedings. The presumption indulged in by the Supreme Court, based upon the allegation that there was a conflict in the testimony regarding the character of the land, that is, whether it was residential or agricultural land, is therefore entirely unsupported by the record. It is therefore impossible for counsel to appreciate how the Supreme Court of the Philippine Islands can find a preponderance of testimony against the report of the commissioners, since counsel's interpretation of the record—and the record is plain and unconfusing—develops an entire absence of conflict certain upon any material point, and it may be said upon any point. The fact that no residences were found upon the condemned land is of absolutely no value whatsoever as evidence,

since no attempt whatsoever was made by the railroad to show that this absence of residences was due to the fact that the sudden coming of the railroad changed the character of land from agricultural to residential without affording an opportunity for the construction of residences. The entire absence of any evidence whatsoever explaining this fact cannot possibly permit it to be used against the landowners. This case must be decided upon the record and not upon the suppositions deemed possible from the testimony offered, where no testimony can be found in support of such suppositions.

None of the careful related provisions in the code specify how the preponderance of evidence in an award of commissioners upon the value of expropriated land is to be determined, and even if this honorable court may hold that the Supreme Court's claim of conflict in evidence is supported by the record, there still remains the opinion of the commissioners, carefully and judicially set forth in their report, which cannot be tested in the manner provided by section 273. In the absence of fraud or corruption, the report of the commissioners based upon a view of the land is entitled to conclusive effect according to Mills on "Eminent Domain," section 246, cited with approval by this honorable court in the Shoemaker case. But were the effect not conclusive, but merely highly persuasive or entitled to great weight, the result will be the same, for the weight of the commissioners' recommendation added to the clearly affirmative proof offered by the witnesses who testified for the landowners makes an overwhelming preponderance in favor of the award of the commissioners as approved by the Court of First Instance.

I.

**The Supreme Court of the Philippine Islands erred in holding as a matter of law that the plaintiff was not entitled to recover the amount fixed by the Commissioners appointed to hear the evidence and view the premises as approved by the trial court under section 246 of the Code of Procedure of the Philippine Islands, as there was no "cause shown" so that the Commissioners' report could be treated in the alternative as provided in said section.**

Section 246 of the Code of Procedure, page 18, *supra*, provides that the court, for "cause shown," may adopt one of several courses in the event that it is not willing to accept and approve the report. It may return the report to the commissioners for a further finding of facts; it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part and make such final order and judgment as shall secure to the plaintiff the property essential to him, and to the defendants just compensation for the land so taken.

The deciding words in this section are necessarily the words "for cause shown," and their construction depends not only upon the section itself but upon the legislation in the Philippine Islands affecting the same conditions. The Supreme Court has ruled by its decision that the acceptance by the commissioners of evidence which the court believes to be untrustworthy and the rejection by the commissioners of evidence which the court believes is a true statement of conditions is "cause shown," which justifies it in modifying the award (Rec., 98), and it also holds that its powers of revision include a case "where commissioners have applied illegal principles to the evidence submitted to them; or they disregarded a clear preponderance of the evidence; or they used an improper rule of assessment in arriving at the amount of

the award" (Rec., 94). It may be said that where the commissioners have credited testimony which is *found* to be untrustworthy or where they have disregarded testimony which is *found* to be trustworthy, the right of revision very probably exists in the Supreme Court of the Philippines, but purely upon the ground that the award itself does not reflect the preponderance of the evidence, and not upon any other legal principle, it being understand, of course, that, as in this case, no fraud or prejudice is claimed or shown. The power of revision under such conditions is only a reasonable exercise of the right of review. This rule, however, is a departure from the general law on the subject as exemplified by the decision of the Supreme Court of the United States in the case of Shoemaker, page 21, *supra*, where it is held that even for a mistake in judgment by the commissioners no power of review rests in the court, since the judgment of the commissioners is based partly upon their view of the premises which "cannot be carried up so as to correct the report as being against the weight of evidence."

The power thus existent in the Supreme Court of the Philippine Islands, if it does exist as a matter of law, under no circumstances, however, is a free and untrammeled right of the review; the right to disregard entirely the invaluable aid to judgment gained by an inspection of the premises; the right to pick and choose from the evidence and for reasons not appearing in the record or not reflected by the testimony to accept or reject portions of the evidence; and the right to characterize property, as has been done in this case, as of a grade absolutely opposed to the unanimous evidence before the commissioners. Were it otherwise, the careful restricted conditions under which the commissioners assess the land and the fundamental rights and privileges of those whose land is to be expropriated would be a snare and a delusion and the award of the commissioners would be nothing more than an expression of opinion to be accepted or promiscuously laid aside at the discretion of the Supreme Court. The strength of this contention has been realized by the Supreme

Court of the Philippine Islands itself in the decisions which it has handed down.

We quote from the case of Manila Railroad *vs.* Attorney-General, 22 Phil. Rep., 192, cited in this record on page 90. The facts of the case are cited on that page of the record.

> "The only ground upon which the plaintiff company bases its contention that the valuations are excessive is the minority report of one of the commissioners. The values assigned to some of the improvements may be excessive but we are not prepared to say that such is the case. Certainly there is no evidence in the record which would justify us in holding these values to be grossly excessive. The commissioners in their report go into rather minute detail as to the reasons for the conclusions reached and the valuations fixed for the various items included therein. There was sufficient evidence before the commissioners to support the valuations fixed by them except those later modified by the court below. * * * Aside from the evidence taken into consideration by the trial judge we find no evidence in the record in support of the contention of the railroad plaintiff that the valuations fixed in the majority report of the commissioners and by the trial court are grossly excessive, and plaintiff company having wholly failed to offer evidence in support of its allegations in this regard when the opportunity so to do was provided in accordance with law, it has no standing in this court to demand a new trial based on its unsupported allegations of grossly excessive valuation of the property by the commissioners and the court below."

No words could more aptly fit the present case. Here there has been offered evidence "sufficient to support the valuations fixed by them (the commissioners)"; in fact, here all the evidence supports the valuations fixed by the commissioners. Here there can be found "no evidence in support of the contentions of the railroad that the valuations fixed are grossly excessive" and here most emphatically is it true that the railroad company has "wholly failed to offer evidence in support of these allegations in this record when the oppor-

tunity so to do was provided in accordance with law." It is just as true today as it was when that above-quoted opinion was handed down that the railroad company has no standing in court.

Again, the Supreme Court has said in the case of Manila Railroad Co. *vs.* Fabie, 17 Phil. Rep., 206, cited on page 90 in the record:

> "Conceding, without deciding, that he (the judge of the Court of First Instance) had the right to formulate an opinion of his own as to the value of the land in question, nevertheless, if he formulate such an opinion, he must base it upon competent evidence."

And in the case of Philippine Railway Co. *vs.* Solon, 13 Phil. Rep., 34:

> "Nor do we decide whether, in a case where the damages awarded by the commissioners are grossly excessive or grossly insufficient, the court can, upon the same evidence presented before the commissioners, itself change the award. We restrict ourselves to deciding the precise question presented by this case, in which it is apparent that, in the opinion of the court below, the damages were not grossly excessive, for its own allowance was only P1,000 less than the amount allowed by the commissioners, and the question is, whether in such a case the court can substitute its own opinion upon the evidence presented before the commissioners for the opinion which the commissioners themselves formed, not only from that evidence but also from a view of the premises which by law they were required to make." (Rec., 92.)

In no case cited by the Supreme Court in its decision, whether the award was approved or modified, were the facts as strongly in favor of the acceptance of the award as here. In this case the report of the commissioners was unanimous; and it was approved as rendered by the Court of First Instance. But more important, the opinion of every witness who testified and the evidence of every sale that was offered showed a valuation in *excess* of the award of the commis-

sioners. Whatever divergence exists between the witnesses as to value, that divergence refers to a value in excess of the amount found by the commissioners. So that, assuming that the Supreme Court has the right to review and modify under any of the circumstances cited above, it is evident that such right cannot possibly exist in this case. In order to support its finding that the commissioners either employed illegal principles in assessing the property or disregarded trustworthy testimony and believed in untrustworthy testimony, the Supreme Court finds it impossible to point to a direct statement by any witnesses who appeared. The very best showing that it can make in its decision is the statement first, that no buildings had been erected on the condemned land, which of course proves absolutely nothing. Second, that the evidence of actual sales made for prices far in excess of the award by the commissioners was to it of doubtful verity, either because the size of the lots sold was supposed to be too small to be of value—although this is not true—or because the sales were not investigated sufficiently to satisfy it that they were *bona fide*, regardless of the fact that the vendors appeared before the commissioners and testified under oath and the railroad was thoroughly satisfied as to the actual facts. Indeed, the railroad attorney stipulated at the time of the hearing that the deeds offered in evidence for the purpose of proving sales of land in the vicinity were genuine (Rec., 48). And third, because some of the witnesses testified that before the railroad came the land was used for agricultural purposes, although no witness was asked or testified to the length of time occurring between the time this land was used as agricultural land and the coming of the railroad, and on the other hand reputable witnesses did testify that for at least three years before these proceedings were instituted the land in that neighborhood was residential land and not agricultural land (Rec., 38). An analysis of the Supreme Court's reasoning in this connection sends us back to the original question in the case: What was the value of the land taken and what was the evi-

dence presented? If it is true that competent evidence was offered, and that no conflict existed, the Supreme Court, under no theory, can revise the award of the commissioners. There were ten witnesses who testified. Nothing is more fundamental in proceedings of this sort than that a court of review cannot question the character of such sworn testimony, when deciding a case purely upon a record, merely because the opinions of some or all of the witnesses are to it doubtful, or actual sales proved and sworn to are to it questionable. The observations of this honorable court in the case of Monongahela Navigation Co. *vs.* United States, 148 U. S., 325, may well be quoted:

> "But we need not have recourse to this natural equity, nor is it necessary to look through the Constitution to the affirmations lying behind it in the Declaration of Independence, for, in this 5th amendment, there is stated the exact limitation on the power of the Government to take private property for public uses. And with respect to constitutional provisions of this nature it was well said by Mr. Justice Bradley, speaking for the court in Boyd *vs.* United States, 116 U. S., 616, 635: 'Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the rights, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon * * * no private property shall be appropriated to public uses unless a full and exact equivalent for it be returned to the owner.'"

## Conclusion.

In conclusion, it may be briefly said that the proceedings in this case were entirely legal and exactly according to the statute; that the railroad was given full and ample opportunity to offer evidence, question witnesses, object to testimony offered, and inspect the deeds of sales; that the commissioners personally inspected the property and after hearing all the witnesses unanimously agreed upon an award which was considerably less than the value of the land as testified to by every witness who appeared; that the railroad was at first sufficiently content with the award to accept it, although immediately after objecting to it; that the railroad made no attempt to offer additional testimony; that the Court of First Instance was in thorough accord with the award and approved it; that the Supreme Court of the Philippine Islands based its decision in the main upon evidence which was not properly before it and had never been presented to the commissioners, and that in employing this evidence the Supreme Court, without any possible extenuation used as a basis, a sale in bulk by one of the landowners to her grandson six months before these proceedings were begun, totally disregarding a subsequent sale of the very same land by this same grandson five months before these proceedings were begun at a price double that which he paid; that the Supreme Court without the support of any direct testimony in the record held the land to be of a character directly opposed to that testified to and that the Supreme Court by its own decisions has demonstrated that its opinion in this case is not consistent with its construction of the Philippine law.

It should be added that the Court of First Instance incorrectly added up the amount due the landowners under its decision, its finding amounting to P88,586.50, which includes the P600 awarded Simeon Perez for the destruction of his warehouse (Rec., 16), when, as a matter of fact, the

actual amount should be P82,602.75, which includes the aforesaid P600, which is the amount referred to by the Supreme Court of the Philippine Islands on page 87 of the record. The petition for the allowance of an amended writ of error (Rec., 121), filed by the Tayabas Land Co., adopted the amount fixed by the Court of First Instance and should be corrected. The amount awarded by the Supreme Court of the Philippine Islands which is stated in this petition for the amended writ of error as being P14,083.60 should be P13,611.69. In any case interest has been approved by the Supreme Court of the Philippine Islands at the rate of 6% per annum since the taking possession of the lands expropriated, and the parties agreed (Rec., 44) that the commissioners should find and fix the dates upon which the railroad company thus took possession.

The plaintiff in error therefore asks that the judgment of the Supreme Court of the Philippine Islands be reversed and that the award of the commissioners in the amount of P82,-012.75, with interest at the rate of 6% per annum from the taking of possession of the lands expropriated by the railroad, as approved by the Court of First Instance, be affirmed.

Respectfully submitted,

(Signed) DAVID A. BAER,
*Attorney for Plaintiff in Error.*

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# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE TAYABAS LAND COMPANY, ASSIGNEE AND SUCCESSOR OF ROMANA VELASQUEZ ET AL., PLAINTIFF IN ERROR,

*vs.*

THE MANILA RAILROAD COMPANY, DEFENDANT IN ERROR.

No 331.

## BRIEF FOR DEFENDANT IN ERROR.

### STATEMENT OF THE CASE.

We do not deem the facts in the case to be sufficiently stated by the plaintiff in error to enable us to discuss properly the question involved, and, having this in mind, the case may be stated as follows:

This case is here on writ of error from the Supreme Court of the Philippine Islands for the review of the judgment of that court fixing the value of certain lands acquired by appellee in condemnation proceedings. The pertinent facts as disclosed by the record are that on January 22, 1913, the defendant,

a corporation organized under the laws of the State of New Jersey, filed its bill of complaint (R. 1), naming Romana Velasquez, Melecio Allarey, and Deogracias Maligalig as defendants, and alleging that it was engaged in operating various railroad lines in the Island of Luzon, Philippine Archipelago, is the grantee of a franchise for the construction of a branch railroad between Lucena and Lanoa, and that by virtue of Acts Nos. 1510 and 1905 of the Philippine Legislature, it had the right to acquire the necessary lands by expropriation in furtherance of the objects in its concessions. That as a part of the right of way of its branch line it required the following parcels of land for its station at Lucena:

> From Romana Velasquez, three parcels of land as follows, respectively: 16,094, 5,250 and 3,497 square meters, marked Nos. 21, 21*a* and 21*b* on the plan.
>
> From Melecio Allarey five parcels of land, respectively, measuring 1,830, 862, 119, 35 and 49 square meters, marked Nos. 22*a*, 22b, 22*c* 22*d* and 22*e*, on the plan.
>
> From Deogracias Maligalig four parcels of land which respectively measure 1,573, 1,512, 1,466 and 1,422 square meters, marked Nos. 23*a*, 23*b*, 23*c* and 23*d* on the plan.

The plaintiff further alleged that it had been unable to acquire by means of an extra judicial agreement the different parcels which compose the foregoing tract, for the reason that it had been unable to discover who are the true owners thereof, and also that some of the occupants or persons who claimed to

possess rights and interest in the various parcels of land are asking for these parcels of land such excessively high prices that it has not been possible to accept them, as these prices do not represent the true and just value of the lands. The plaintiff asks that the court render judgment, adjudicating to the plaintiff company the property and dominion of the parcels of land which are sought to be expropriated and fixing the true price which the company should pay therefor. On the same day the plaintiff moved the court to pass an order directing that the plaintiff shall have the right to enter upon the possession of the land involved, upon the deposit by it with the Treasurer of the Philippine Islands of the sum of 2,582.22 pesos, the assessed value of the parcels of land sought to be expropriated. (R. 3–4.) This motion was granted by the court on January 22, 1913. On January 26, 1913, the defendant Romana Velesquez filed a motion in which she disclaimed all interest in the property sought to be condemned, alleging that she had sold to Simeon Perez and Filemon Perez prior to the presentation of the complaint in the case the land described in the bill of complaint as belonging to her, and asked that they be included as defendants. (R. 5.) On February 3, 1913, Simeon Perez and Filemon Perez were by order of the court made parties defendant. (R. 6.) Subsequently Francisco Icasiano, to whom Filemon Perez on August 16, 1912, had sold parcel 21, containing 16,094 square meters, was also made a party defendant. (R. 7.) In the deed of sale dated July 21, 1912 (R. 29), from Romana Velasquez to Filemon

Perez of parcel 21, measuring 16,094 square meters, reciting that this land will be traversed by the railroad company and will be expropriated by that company, the purchase price is given as 6,500 pesos. In the deed of sale dated November 9, 1912 (R. 30), from Romana Velasquez to Simeon Perez of three parcels of land, exceeding 23,000 square meters, in which were included lots Nos. 21*a* and 21*b*, described in said bill of complaint, the consideration given for these parcels was the sum of 2,500 pesos. (R. 103.) The defendants filed their answers to the bill of complaint, alleging that the value of the land sought to be expropriated was 5 pesos per square meter. (R. 7–8.) Thereupon the court on April 16, 1913, issued an order appointing commissioners of appraisal to hear the parties in the case and to fix the amount of the indemnity which should be paid for the property sought to be expropriated. At this hearing testimony was adduced on behalf of the plaintiff and defendants (R. 33–48, inclusive) upon the question of the value of the land in controversy, the testimony showing a marked conflict with respect to the value of the land. On June 13, 1913, the commissioners of appraisal submitted their report to the court and this report fixed the value of the land taken as follows: Parcel No. 21, 2 pesos per square meter; parcel No. 21*b*, 3.75 pesos per square meter; parcel 21*a*, 3.50 pesos per square meter; parcels Nos. 22*a*, 22*b*, 22*c*, 22*d* and 22*e*, 2 pesos per square meter; and parcels Nos. 23*a*, 23*b*, 23*c*, and 23*d* at 2 pesos per square meter, and damages sustained by Simeon Perez in the erection of a store-

house and for work thereon, 600 pesos. (R. 9–10.) The various parcels of land sought to be expropriated were by the defendants on July 1, 1913, conveyed to the Tayabas Land Company, the appellant herein, (R. 68–81), except the parcel of land known as lot 21 owned by Francisco Icasiano, which was conveyed to said company on the 26th day of May, 1913. On February 2, 1914, the Court of First Instance of Tayabas, after receiving testimony offered by the defendants, they having failed to establish their claim of ownership to the lands in controversy at the hearing before the commissioners, entered a decree decreeing that the plaintiff was entitled to expropriate the parcels of land described in the bill of complaint, and directing it to pay to the defendants the amounts fixed by the commissioners as the value of the property and the damage sustained by Simeon Perez, the total amount decreed to be paid as the value of the property being 81,412.75 pesos. (R. 16.) To this judgment the plaintiff on the 9th of February, 1914, excepted, and moved for a new trial upon the grounds, among others, that the damages assessed by the commissioners and the value of the lands as assessed by them, and as found by the court, were excessive and exorbitant and beyond the bounds of reason; that the value of the land as estimated and found by the court was so exorbitant and far in excess of the true and reasonable value thereof as to indicate prejudice on the part of the commissioners; that the commissioners in arriving at their estimate of value and damages did not base the estimate on correct principles of law, and that

the decision of the court was contrary to the weight of the evidence. (R. 17.) On February 17, 1914, the defendants also excepted to the decision of the court and moved for a new trial. These motions were denied by the court, whereupon the plaintiff and defendants filed their bill of exceptions and appealed the judgment to the Supreme Court of the Philippines. (R. 19.) That court, by virtue of the authority conferred by sections 246, 496 and 497 of the Code of Civil Procedure of the Philippine Islands, reviewed all the evidence and modified the judgment of the court below by reducing the award for the parcel containing 16,094 square meters to the sum of 6,500 pesos and the award for the remaining parcels at the same proportionate amount. As thus modified, the judgment appealed from was confirmed. The court in its opinion said:

> "We are, therefore, led to the conclusion that the price at which practically half of the condemned land was sold by Romana Velasquez to the defendant, Filemon Perez, is a most liberal estimate of its value. We refer to her sale of the parcel of 16,094 square meters for 6,500 pesos. This parcel comprises practically one-half of the entire station site and no outside land was included in the transaction. The sale was made after it became known that the land sold was to be part of the station site, and a statement to this effect was included in the deed. Both parties being aware that the land was to be condemned by the plaintiff company, it cannot be said that they were not aware

of all the latent utility of the land. For these reasons, the price which this parcel brought should serve as an excellent criterion of the value of the entire station site. And while no explanation is given of why the sale occurred, since, of course, no one would buy it with the expectation of using it himself when he knew that it would shortly be occupied by the railroad company, still there is not sufficient indication that it was sold for speculative purposes or that the element of speculation entered into the transaction to enable us to say that the price was inflated and exceeded the actual market value of the land. This price assumes the value of the condemned land as agricultural land to be worth ₱500 per hectare, and leaves a little more than ₱3,500 for its potential value as a residential district and as a railroad station site. This is, furthermore, approximately 400 per cent higher than Sra. Velasquez' second sale (some four months later) to Simeon Perez, when she sold about 23,000 square meters in the same neighborhood for a little over ₱1,000 per hectare.

"It is to be further noted that the average assessed valuation of the condemned property is somewhat less than ₱0.08 per square meter, while the highest assessed valuation of any of it is only ₱0.23 per square meter, which is carried by some 5,973 square meters, or less than one-sixth of the whole. It is also to be noted that these 5,973 square meters were appraised by the commissioners as being worth exactly what the 16,094 square meters were worth, the latter being assessed for taxation purposes at only ₱0.03 per square meter.

"At the price we have fixed, we are of the opinion that any consequential damages which may have been occasioned to any of the defendants by the condemnation proceedings is amply cared for.

"The defendant, Simeon Perez, was awarded ₱600 damages by the commissioners for being compelled to remove a building in course of construction at the time the expropriation proceedings were started. This building was designed to serve partly as a warehouse and partly for stores. He commenced its construction about the middle of December, 1912, after it became known that the plaintiff company wanted the land for a railroad station. Construction work was ordered stopped by the court. From the vague description of this order in the record, we presume it was the order of the court of date of January 22, 1913, placing the plaintiff in possession of the land under the provisions of Act No. 1258 as amended by Act No. 1592. Until such action was taken by the railroad company, or until the commissioners were appointed and had appraised the land, we know of no legal provision which would prohibit the owner from doing with the land what he pleased. The Act in question gives to the company 'the right to enter immediately upon the possession of the land involved.' (Sec. 3.) This amendment to Act No. 1258 was enacted especially for the benefit of railroad companies, and affords full protection to them if they act with due diligence. Until some such positive assertion of its desire to expropriate the land, no reason is seen why the company might not ask for a

dismissal of the proceedings in accordance with section 127 of the Code of Civil Procedure. The right of the owner to the enjoyment of his property ought not be made to depend so entirely upon the whims of a third party. No attempt was made to meet the statement of Perez that he had expended a large sum of money on the construction of the building. The commissioners probably saw the structure or some of the materials which entered into it, and are in a much better position to judge of the amount expended upon the work than are we. They have fixed that amount at ₱600. In the absence of positive evidence in the record showing this finding to be grossly excessive, we must accept it as correct.

"For the foregoing reasons, the judgment of the court below is modified by reducing the award for the parcel containing 16,094 square meters to the sum of ₱6,500. The damages for the remaining parcels will be fixed at the same proportionate amount. As thus modified the judgment appealed from is affirmed. No costs will be allowed on this appeal. The amount as herein fixed, together with interest, will be deposited with the clerk of the Court of First Instance of Tayabas, subject to the rights of the defendants and the Tayabas Land Company." (R. 108, 109.)

## ASSIGNMENT OF ERRORS.

"1. The Supreme Court of the Philippine Islands erred in holding as a matter of law that the plaintiff in error was not entitled to recover the amount fixed

by the commissioners appointed to hear the evidence and view the premises as approved by the Trial Court under Section 246 of the Code of Procedure of the Philippine Islands, as there was no 'cause shown' so that the commissioners' report could be treated in the alternative as provided in said section.

"2. As a matter of law the Supreme Court of the Philippine Islands erred in setting aside the conclusions of the Court of First Instance based upon the weight and preponderance of the evidence as determined by the rule of evidence of Section 273 of the Code of Procedure for the Philippine Islands, as the decision rendered by the Supreme Court of the Philippine Islands is not within the certain exceptions authorized to be reviewed under the procedure of the Supreme Court of the Philippine Islands, as provided in Section 497 of its Code of Procedure.

"3. The conclusion of the Supreme Court of the Philippine Islands as to the liberal value of the land in question is based upon incompetent evidence and erroneous conclusions of law." (R. 122, 123.)

## ARGUMENT.

### I.

**The Supreme Court of the Philippine Islands is vested with the power to modify the judgment of the Court of First Instance.**

The first two assignments of error present the single question whether under sections 246, 496 and 497 of the Philippine Code the Supreme Court of the Philippine Islands had the authority to modify the judgment of the Court of First Instance in the case at bar.

That the authority exercised by the court in so modifying the judgment is in terms conferred by said sections of the Philippine Code is clearly manifest.

Section 246 provides:

> "Action of the court upon commissioners' report.—Upon the filing of such report in court, the court shall, upon hearing, accept the same and render judgment in accordance therewith; or, for cause shown, it may recommit the report to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part, and may make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken; and the judgment shall require payment of the sum awarded as provided in the next section before the plaintiff can enter upon the ground and appropriate it to the public use."

Thus it is seen that this section undertakes to confer upon the court the power to accord substantial justice in a condemnation proceeding, and to enable it to accomplish this purpose the court is given a wide latitude of action. Under the statute the court is in no wise bound by the report of the commissioners of appraisal. It may accept the same and render judgment in accordance therewith, or if there are not sufficient facts to justify the action of the court upon the report, it may recommit the report to the commissioners for further report of facts, or it may set

aside the report and appoint new commissioners, or if the facts justify it, the court may accept the report in part and reject it in part and make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken. The section in terms expressly authorizes the court to "make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law and to the defendant just compensation for the land so taken." By this clause in the section it is apparent that the court may, upon a consideration of all the evidence, render such judgment as will afford substantial justice. It is designed therefore to confer upon the court the discretion, if it shall determine that the evidence before it is sufficient to enable it to exercise its discretion, to enter any judgment that it may conclude to be equitable and just. While the assignments of error apparently admit that the Court of First Instance is empowered, upon the filing of the report by the commissioners, to consider all the evidence submitted and to enter such judgment as will be just and equitable, they seem to present the contention that the Supreme Court of the Philippines is without the power to modify a judgment which may be entered by the Court of First Instance in a condemnation proceeding. That this contention is wholly without merit is perfectly obvious upon a considera-

tion of the provisions of sections 496 and 497 of the Civil Code. Section 496 of the Civil Code provides that:

> "General procedure in the Supreme Court.—The Supreme Court may, in the exercise of its appellate jurisdiction, affirm, reverse, or modify any final judgment, order, or decree of a Court of First Instance, regularly entered in the Supreme Court by bill of exceptions, or appeal, and may direct the proper judgment, order or decree to be entered, or direct a new trial, or further proceedings to be had, and if a new trial shall be granted, the court shall pass upon and determine all the questions of law involved in the case presented by such bill of exceptions and necessary for the final determination of the action."

Section 497 as modified by Act No. 1596 of the Philippine Legislature in part provides:

> "Hearings confined to matters of law, with certain exceptions.—In hearings upon bills of exception in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section hereinafter provided; but shall determine only questions of law raised by the bill of exceptions. But the Supreme Court may review the evidence taken in the court below and, after giving due weight to the fact that the judge who tried the case saw the witnesses when they testified, affirm or reverse by a preponderance of the evidence, or modify by such preponderance, the judgment there ren-

dered, as justice may require, in the following cases:

"(*a*) If before the final determination of an action pending in the Supreme Court on bill of exceptions, new and material evidence be discovered by either party, which could not have been discovered before the trial in the court below, by the exercise of due diligence, and which is of such a character as probably to change the result, the Supreme Court may receive and consider such new evidence, together with that adduced on the trial below, and may grant or refuse a new trial, or render such other judgment as ought, in view of the whole case, to be rendered, upon such terms as it may deem just. The party seeking a new trial, or a reversal of the judgment on the ground of newly discovered evidence, may petition the Supreme Court for such new trial, and shall attach to the petition affidavits showing the facts entitling him to a new trial and the newly discovered evidence. Upon the filing of such petition in the Supreme Court, the court shall, on notice to both parties, make such order as to taking further testimony by each party, upon the petition, either orally in court, or by depositions, upon notice, as it may deem just. The petition, with the evidence, shall be heard at the same time as the bill of exceptions.

"(*b*) If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and

> make such findings upon the facts by a preponderance of the evidence, and render such final judgment, as justice and equity may require. But, if the Supreme Court shall be of the opinion that this exception is frivolous and not made in good faith, it may impose double or treble additional costs upon the excepting party, and may order them to be paid by the counsel prosecuting the bill of exceptions, if in its opinion justice so requires."

Thus it is seen that the statute in plain terms expressly empowers the Supreme Court of the Philippine Islands to review the evidence and modify the judgment if justice requires it so to do. As the defendant in error in the case at bar excepted and moved for a new trial upon the ground that the evidence was insufficient to justify the decision (R. 17), and the Court of First Instance overruled such motion and due exception was taken to his ruling (R. 18), the case at bar is brought clearly within the class of cases mentioned in the foregoing section, in which the Supreme Court of the Philippines is authorized "to review the evidence and make such findings upon the facts by a preponderance of the evidence and render such final judgment as justice and equity may require." The assignments of error proceed upon the theory that a judgment in a case involving the right of expropriation is not the character of judgment which may be modified by the Supreme Court of the Philippine Islands, but in the light of the clearly expressed provisions of the sections referred to, we are unable to conceive any ground upon which such a contention could be based.

It is perfectly apparent that these sections of the Philippine Code were intended by the Legislature to confer upon the court below in a case where the right of expropriation had been exercised the same power with which it is vested to examine the testimony in other cases and render such judgment therein as it may conclude to be warranted by the evidence, the statute making no distinction between a judgment in an expropriation case and a judgment in other cases. The Supreme Court of the Philippine Islands has construed these sections as applicable to expropriation cases, and this interpretation with respect to a matter of purely local concern should not be disturbed by this court unless such interpretation should be regarded as clearly wrong.

> "We should not decide against the local understanding of a matter of purely local concern unless we thought it clearly wrong, instead of thinking it, as we do, plainly right."
> *Santa Fe Ry. Co.* v. *Friday*, 232 U. S. 694.

In the case of *Gauzon* v. *Compañia de General Tabacos de Filipinas*, 245 U. S. 86, this court in reviewing the judgment of the Supreme Court of the Philippine Islands said:

> "We are not disposed to disturb this judgment of the Supreme Court construing local laws and announcing a rule applicable in the Islands."

This rule enunciated by this court is especially applicable to the case at bar since the decision in this case by the court below is in accordance with the

settled doctrine of that court holding that it is vested with the power to review the evidence and modify a judgment in a condemnation proceeding. In the *City of Manila* v. *Estrada*, 25 Philippine Reports 209, in which the court reviewed all the decisions of the Philippine Supreme Court involving the power of that court to modify a judgment in a condemnation proceeding, the City of Manila sought to expropriate a parcel of land with its improvements for use in connection with the public market. The commissioners after viewing the premises and hearing the evidence, being unable to agree, submitted two reports to the court. In the majority report the value of the land was fixed at 20 pesos per square meter, and in the minority at 10 pesos. The Court of First Instance fixed the value at 15 pesos per square meter. The Supreme Court of the Philippines reviewed the evidence, modified the judgment and fixed the compensation at 10 pesos per square meter. The Supreme Court of the Philippines in modifying a judgment in a condemnation proceeding has never regarded that the power conferred upon it could only be exercised unless prejudice or fraud had been shown. The case of *Manila* v. *Estrada*, *supra*, is authority for the rule adopted by that court that it will interfere with the report of the commissioners and modify the judgment if the court is of the view that the award is grossly excessive or grossly insufficient. That the award in the instant case by the commissioners and confirmed by the Court of First Instance was grossly excessive can not be open to serious question. It was more than thirty times

the assessed value of the property (R. 4), and many times the price for which the greater part of the property was sold after it had become known that the property would be expropriated by the railroad company.

The rule thus established by the Supreme Court of the Philippines is in accordance with the doctrine of the courts of Louisiana. In *Texas & P. Ry. Co.* v. *Southern Development Co.*, 52 La. Ann. 535, the court in considering this question said:

> "Our attention is directed by counsel's brief to those decisions in which it is held that a verdict of a jury, as relates to facts, is presumed to be correct; also to the section of the Revised Statutes (1481) ordering that the jury shall, by its verdict, determine, after hearing the parties and the evidence. We adhere to the decisions to which we have been referred, and we always attach importance to the verdict of a jury, but we think in this case the jury has made an error in adopting too low an estimate. Regarding the statute just cited, it directs the jury to determine the controversy, but the verdict is always subject to review on appeal. On appeal, the whole case is examined and tried. The whole case is subject to review on the law and the facts, and if, in thus reviewing a verdict, we arrive at the conclusion, despite the respect we entertain for the jury's verdict, that the amount should be increased, we can not do less than increase it to the amount we think the evidence sustains. This increase over the amount of the verdict, in view of the evidence in the case, is, we think, authorized by our jurisprudence."

In Morgan's *Louisiana & T. R. R. & S. S. Co.* v. *Barton*, 51 La. 1338, the court in discussing the principle pertinent to our inquiry said:

> "On this line of examination, we find the award gives an amount for the land in palpable excess of any value that can be deduced from the price paid plaintiff. Giving all possible weight, or, rather, restricting the testimony of the plaintiff's witnesses to its due influence, and giving, we think, necessary effect to the acts by which defendant purchased, the acts of sale of other land, the assessment of value, with due allowance for underassessment, and the other testimony in the record, we reach the conclusion that the award gives two-thirds more than the value of the land. We think this a plain case of an excessive award, against which the appeal must give relief."

In the *City of Shreveport* v. *Noel*, 114 La. 187, the court said:

> "The law of this state, however, specifically provides for an appeal in an expropriation case upon the question of value, as also upon the question of the necessity for the expropriation; and, whilst this court has frequently held that the verdict of the jury will not be disturbed unless manifestly erroneous (*City* v. *Schroeder*, 111 La. 653, 35 South. 800; *City* v. *Morgan*, 111 La. 851, 35 South. 951; *H. & S. R. Co.* v. *K. C. S & G. R. Co.*, 109 La. 581, 33 South. 609; *N. R. & C. Co.* v. *Henry*, 109 La. 669, 33 South. 725), it has also frequently set aside or modified such verdicts

> because they were manifestly erroneous, and such rulings were predicated upon the evidence brought up in the transcripts of appeal. *Abney* v. *R. Co.*, 105 La. 446, 29 South. 890; *City* v. *Manfre*, 111 La. 927, 35 South. 981; *M. L. & T. R. Co.* v. *Barton*, 51 La. Ann. 1338, 26 South. 271; *R. Co.* v. *Development Co.*, 52 La. Ann. 535, 27 South. 101."

In *New Orleans Ry. & Light Co.* v. *Lavergne*, 138 La. 949, the court in emphasizing this principle said:

> "From the repeated decisions that the amount of compensation allowed by a jury in expropriation proceedings should not be reduced unless it is manifestly excessive (*N. O. F. J. & G. I. R. R.* v. *McNeely*, 47 La. Ann. 1298, 17 South. 798; *T. & P. Ry. Co.* v. *Wilson*, 108 La. 3, 32 South. 173; *Shreveport* v. *Youree*, 114 La. 184, 38 South. 135, 3 Ann. Cas. 300) it follows that the award should be reduced if it is manifestly excessive."

In *Little Tarkio Drainage Dist.* v. *Richardson*, 237 Mo. 49, the court in passing upon a statute of Missouri providing that:

> "The court shall make such order therein as right and justice may require, and may order a new assessment, upon good cause shown,"

held that, because of a constitutional restriction in the Constitution of the State of Missouri, when the exceptions filed challenged the assessment of the cash value of the land to be taken for the right of

way, the court must grant a jury trial when demanded by the land owner, nevertheless this provision gave the court the right to increase or decrease the amount awarded by the commissioners for damages and benefits.

The contention is made by the plaintiff in error (brief, p. 20) that if no error of law has been committed by the commissioners of appraisal in the admission of testimony and the application of correct legal principles to the testimony, the finding of the commissioners is *practically* binding upon the court of review if no improper conduct or fraud is charged, and cites *Shoemaker* v. *United States*, 147 U. S. 305, in support of its position. It is significant that the plaintiff in error does not claim that in the absence of error of law, improper conduct, fraud or prejudice, the report of the finding of the commissioners is absolutely binding upon the court of review, but qualifies its position by the phrase "is practically binding upon a court of review," thus tacitly admitting that in the case at bar it was not binding upon the Supreme Court of the Philippine Islands. It is either binding or it is not binding. There can be no middle ground. The authorities cited herein show conclusively that it is not binding upon the Supreme Court of the Philippine Islands. That the case of *Shoemaker* v. *United States* cited by the plaintiff in error is wholly inapplicable to the question presented is apparent upon the slightest consideration. In the statute under consideration in the Shoemaker case the court was not given the power to modify the judgment, while in the case at bar, however, ample

power is conferred upon the court so to modify the judgment as justice and equity may require, a power which the Supreme Court of the Philippines has consistently exercised.

Another contention made by plaintiff in error (brief, p. 36) is that there must be some conflict in the evidence to justify the Supreme Court of the Philippines in modifying a judgment, and it proceeds to argue that the evidence in the case at bar does not present any conflict. The statute does not place any such limitation upon the power of the Supreme Court of the Philippines, but in express terms provides that it may upon consideration of all the evidence render "such final judgment as justice and equity may require." Moreover, conceding for the purposes of the argument the soundness of the contention of the plaintiff in error that the power to modify can be exercised only where a conflict in the testimony occurs, nevertheless in the light of the record, it is exceedingly difficult to follow plaintiff in error's argument when it states there is no conflict in the evidence in the case at bar. There are not only conflicts in the evidence, but conflicts and discrepancies of the most glaring character, the nature of which will be pointed out hereafter in a discussion of our contention that the conclusion of the court below was just and proper.

It is also contended by the plaintiff in error (brief, p. 38) that there was "no cause shown," so that the commissioners' report could be treated in the alternative as provided in section 246 of the Code of Procedure. We are at a loss to understand how the plaintiff in error has come to make this statement in

the light of the record. The plaintiff in error obviously has overlooked the proceedings embodied in the record since the record discloses that "cause was shown," the defendant in error (R. 49) pointing out specifically the grounds upon which it based its contention that the report and findings of the commissioners should be disapproved. Again in the exception and motion for a new trial (R. 17), the defendant in error shows cause why the report of the commissioners and the judgment of the Court of First Instance should not be affirmed.

It is submitted, therefore, that the Supreme Court of the Philippine Islands is vested with the power to modify the judgment of the Court of First Instance, and that this power was properly exercised in the case at bar.

## POINT II.

**The contention of the plaintiff in error presented by the third and last assignment of error that the conclusion of the court below as to the value of the land, which is the subject of the expropriation proceedings, is based upon incompetent evidence and erroneous conclusions of law is wholly without merit.**

*No question of fact is raised by the assignment of errors, nor could there be since the decision by the court below upon the issues of fact will not be disturbed by this court on the writ of error.*

> "A writ of error is a general method of bringing cases to this court, an appeal the exception, confined to equity in the main."
>
> *Carino* v. *Insular Government*, 212 U. S. 449.
>
> See also *Ormsby* v. *Webb*, 144 U. S. 47.
>
> *Campbell* v. *Porter*, 144 U. S. 478.
>
> *Tiglao* v. *Philippine Islands*, 215 U. S. 410.
>
> *Jover y Costas* v. *Philippine Islands*, 221 U. S. 623.
>
> *Gauzon* v. *Compañia General de Tabacos de Filipinas*, 245 U. S. 86.

In the latter case this court said:

> "Upon such writ [writ of error], the case having been decided upon the issues of fact, this court will not reconsider the conclusions of the lower court, which finds support in the record, in reaching its judgment."

It is well settled that upon a writ of error this court will review only errors of law.

*Dower* v. *Richards*, 151 U. S. 658.
*Elliott* v. *Zoeffner*, 187 U. S. 327.
*Gsell* v. *Insular Collectors of Customs*, 239 U. S. 93.

*The question presented therefore by this assignment of error is not whether a wrong conclusion was reached by the court below, but whether its judgment is based upon incompetent evidence.*

*That the judgment of the court below is based upon competent evidence cannot be open to serious question.*

Under the statute it will be remembered that the court below was empowered to review the evidence and render such final judgment as justice and equity might require. In reaching its conclusion in a case the court is controlled by the principle that the compensation, *Searl* v. *School District*, 124 U. S. 197, must be just to the public as well as to the owners. As was said by this court in *United States* v. *Chandler-Dunbar Company*, 229 U. S. 53, 81:

> "The owner must be compensated for what is taken from him, but that is done when he is paid its fair market value for all available uses and purposes."

And in determining the value of the land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties, the inquiry in such cases being what is the property worth in the market. *Miss. Boom Co.* v. *Patterson*, 98 U. S. 403; *Simpson* v. *Shepard*, 230 U. S. 352, 445; *U. S.* v. *Chandler-Dunbar Co.*,

*supra*. The record shows that these principles were applied by the court below in reaching its decision. The contention is made, however, that the court below based its conclusion upon incompetent evidence. It is difficult to understand the basis for this claim, since the court considered all the evidence in the record, none of which had been excepted to by the plaintiff in error, and concluded therefrom that the price at which practically one-half of the condemned land was sold by Romana Valesquez to Filemon Perez was a most liberal estimate of its value. (R. 108.) The sale of this land was made about six months before the condemnation proceeding was instituted and after it had become known that the land which was the subject of the sale was to be part of the station site, and a statement to this effect was included in the deed. With reference to this fact the court below in its opinion said:

> "Both parties being aware that the land was to be condemned by the plaintiff company, it can not be said that they were not aware of all latent utility of the land. For these reasons, the price which this parcel brought should serve as an excellent criterion of the value of the entire station site."

The court in its opinion held that upon a consideration of all of the evidence it was led to the conclusion that the price for which this land was sold should serve as an excellent criterion of the value of the entire station site. (R. 108.) The evidence of the price for which this particular land was sold was

not only competent evidence, but an important piece of evidence in determining its market value.

*Hamm* v. *City of Salem*, 100 Mass. 350.
*Jones* v. *Chicago & I. R. Co.*, 68 Ill. 380.
*Swanson et. al* v. *Keokuk & W. R. Co.*, 116 Iowa 304.
*Peabody* v. *N. Y., N. H. & H. R. Co.*, 187 Mass. 489.
*Guyandotte Valley Ry. Co.* v. *Buskirk*, 57 W. Va. 417.
*In Re Department, etc.*, 53 Hun 280.
*State ex rel* v. *Superior Court of Spokane Co.*, 55 Wash. 64.

The rule is well established that the actual sale price of property is evidence of its market value.

*Houston* v. *Western Washington R. Co.*, 204 Penn St. 321.
*Jackson* v. *Pescia*, 124 N. Y. S. 735.
*Johnson* v. *McMullin*, 3 Wyo. 237.
*Hangen* v. *Hachemeister*, 114 N. Y. 566.
*Hoffman* v. *Conner*, 76 N. Y. 121.

In *Houston* v. *Western Washington Railroad Co.* the court said:

> "It is true the sale of a portion of the property does not fix with certainty its market value as a whole, but it is an element fair to be considered by the jury."

Discussing this character of evidence and the weight to which it is entitled, Nichols on Eminent Domain, Second Edition, Volume 2, section 454, says:

> "When a parcel of land is taken by eminent domain, the price which the owner paid for it when he acquired it is one of the most im-

portant pieces of evidence in determining its present value, provided the sale was recent, and was a voluntary transaction between parties each of whom was capable and desirous of protecting his own interests, and no change in conditions or marked fluctuation in values has occurred since the sale. A price paid under such conditions is a circumstance which a prospective purchaser would seriously consider in determining what he himself should pay for the property."

The recital in a deed of the consideration paid for the purchase of property is prima facie evidence of the payment of such consideration.

*Clements* v. *Landrum*, 26 Ga. 401.
*Mills* v. *Dow's Adm.*, 133 U. S. 423.
*Sachse* v. *Loeb*, 69 S. W. 460.
*Reynolds* v. *Vilas*, 8 Wis. 471.
*Hedley* v. *Briggs*, 2 R. I. 489.
*Trayer* v. *Reeder*, 45 Ia. 272.
*Lawton* v. *Buckingham*, 15 Ia. 22.
*Wood* v. *Chapin*, 13 N. Y. 509.
*Vorebeck* v. *Roe*, 50 Barb. 302.
*Ayres* v. *McConnel*, 15 Ill. 230.
*Dooper* v. *Noelke*, 5 Daly 413.

Serving to illustrate this principle are the following excerpts from some of the cases:

In the case of *Clements* v. *Landrum*, *supra*, which was an action to recover damages for breach of a covenant contained in a deed, the recital in the deed showed that the consideration mentioned was $300. On the question as to whether the recital was prima facie evidence of the consideration, the court said:

> "The consideration expressed in the deed must, therefore, be presumed to be the value of the land in money agreed upon by the parties. As the presiding judge in the court below said to the jury, it is a presumption which might be rebutted by evidence; but unless so rebutted, it must stand as the price agreed upon by the parties."

This court in *Mills* v. *Dow's Administrator, supra,* in passing upon this question, said:

> "It is contended by the defendant that the instrument contains an admission of the receipt of the entire $15,000; and the question on this branch of the case is whether the plaintiff is precluded from showing the true state of facts. It is well settled in Massachusetts that a recital in the deed, acknowledging payment of the consideration stated, is only prima facie proof, and is subject to be controlled or rebutted by other evidence."

In the case of *Sachse* v. *Loeb, supra,* the court said:

> "The consideration recited in the deed from Wm. Sachse is $1,300, for which amount, with 6 per cent interest from date of said deed, plaintiff sought to recover. Defendants pleaded that the true consideration paid was only $160, and that that was its value at that time. The recitation in the deed is prima facie the consideration paid, and the plaintiff made her case on that issue by the introduction of the deed."

It will be remembered that in the case at bar the deeds were introduced in evidence by the plaintiff in error as an essential part of its case.

In *Trayer* v. *Reeder*, *supra*, the court said:

> "The deed is prima facie evidence of the consideration paid."

In *Wood* v. *Chapin*, *supra*, the court said:

> "The acknowledgment in the deed of the payment of a consideration is, uncontradicted, sufficient evidence of the fact of such payment."

In *Vorebeck* v. *Roe*, *supra*, the court said:

> "But the case shows that his deed was read in evidence, and that probably contained an acknowledgement of such payment. And if it did, that would be presumptive evidence that the fact was as the deed stated it to be."

Again in *Dooper* v. *Noelke*, *supra*, it was said:

> "The deed executed by the trustees and the beneficiaries under the former deed acknowledges the receipt of the purchase money, which, uncontradicted, is sufficient evidence of its payment."

It will be noted that in the instant case there is not the slightest suggestion that the deed does not recite the true consideration. It was introduced by the plaintiff in error and was therefore in evidence for all purposes.

That the consideration paid for the purchase of property as expressed in a deed is prima facie proof of such fact is too well settled to require further citation of authority.

The plaintiff in error (brief, p. 40) in opposing this view cites the case of *Manila Railroad Company* v.

*Fabie*, 17 Philippine Reports 206, and claims that the decision in that case supports the position of the plaintiff in error. The only evidence introduced in the Fabie case was the deeds showing the conveyance of property which had been sold, which property was in the vicinity of the property which was sought to be appraised. As to these deeds, which were unaccompanied by any evidence showing that the land sought to be condemned was of a like character to the lands described in the deeds, the court very properly held it might not upon a consideration of the deeds alone, in the absence of any other evidence, reach a conclusion of the value of the land sought to be expropriated. However, recognizing the principle here contended for, the court said:

> "Undoubtedly deeds conveying property in the same locality are of value in determining the market value of land in that vicinity, provided they are shown to have been made in the ordinary course of legal business and competition and that the prices stated therein were real and not affected by unusual conditions. Standing alone, however, they may be very misleading."

Plainly, therefore, the price for which property is sold is evidence of its market value and the recital in a deed of the price so paid is prima facie proof of such fact.

The plaintiff in error contends (brief, p. 20) that inasmuch as the deeds in evidence containing a recital of the consideration for which the various parcels of land were sold were not before the commissioners of appraisal, but which, however, were

introduced by the plaintiff in error before the Court of First Instance as a part of its case, the recital of the purchase price in the deed of sale of parcel 21 from Romana Valesquez to Filemon Perez should not have been considered by the Supreme Court of the Philippine Islands. There is not the faintest intimation that the deed does not recite the true consideration, the criticism of plaintiff in error being addressed only to the fact that the deed was not before the commissioners of appraisal when they considered their findings and reported to the court. This deed, as well as the other deeds which were introduced in evidence by the plaintiff in error, was an essential part of the plaintiff in error's case. It was a piece of evidence in the case, an important piece of evidence, without which a judgment could not have been entered in favor of the plaintiff in error, and it is this piece of evidence which the plaintiff in error now contends should not have been considered by the court. It also criticizes the consideration of this evidence upon the ground that the deed had been offered for a specific purpose and claims that it could not be used for any other purpose. The two objections present the single proposition whether it was proper for the court below to consider this testimony. It will be remembered that the deeds were offered in evidence generally and no statement appears in the record seeking to restrict or limit the evidence of these deeds to a single purpose. That the court below not only had the right to consider this testimony, but that it was its duty so to do, is too plain for argument. This particular evidence was one of the essential supports upon which rested the plaintiff

in error's right to have a judgment entered in its favor. Admittedly the Supreme Court of the Philippines had the right to consider the deed for at least one purpose, and having this right the court may consider it for all purposes.

Where a document is introduced in evidence to prove certain facts, it is admitted in its entirety and for every purpose, and is therefore binding and conclusive as against the party introducing it.

*Fish* v. *Bangs*, 113 Mass. 123.
*Hop* v. *Soper*, 7 Hawaii 4.
*Hulbert* v. *Hammond*, 41 Michigan 343.
*Burke* v. *Erie R. Co.*, 119 N. Y. Supp. 309.
*Jonasson* v. *Weir*, 115 N. Y. Supp. 6.
*Lillian Realty Co.* v. *Erdurm*, 120 N. Y. Supp. 749.
*Young* v. *Bank of Alabama*, 5 Ala. 179.

Moreover it was the duty of the Supreme Court to review the evidence and render such final judgment as justice and equity might require. The entire record, including the deeds referred to, was before that court and it was the duty of the court to weigh and consider all of the evidence appearing in the record, in order that it might under the law render a just and equitable judgment. Surely it may not be argued that the court charged with the duty of rendering a judgment upon the facts in accordance with justice and equity should close its eyes to important evidence contained in the record introduced by the plaintiff in error, which from its very nature was an essential part of the plaintiff in error's case.

After all, the recital in the deed of the purchase price of lot 21 was used by the court only as expressing

the conclusion which the court had reached upon a consideration of all the evidence as to the liberal value of the land. In this connection the court after considering all the evidence said:

> "We are, therefore, led to the conclusion that the price at which practically half of the condemned land was sold by Romana Valesquez to the defendant, Filemon Perez, is a most liberal estimate of its value. We refer to her sale of the parcel of 16,094 square meters for 6,500 pesos." (R. 108.)

It is submitted that the judgment of the court below was based upon competent evidence and therefore should not be disturbed, even though this court should be of the opinion that the Supreme Court of the Philippines reached the wrong conclusion upon the evidence. This court will not reconsider the conclusions of the lower court, which finds support in the record, in reaching its judgment. *Gauzon* v. *Compañia General de Tabacos supra.*

*The record, however, discloses that the conclusion of the court below was just and proper.*

It justifies the conclusion that there was no difference in value between the various parcels of land expropriated for the station site. Lot 21, one of the parcels condemned, containing 16,094 square meters, had been sold shortly before the institution of the condemnation proceedings for the sum of 6,500 pesos, or a little more than .40 pesos per square meter; and this price was regarded by the court below as serving as an excellent criterion of the value of the entire station site. This parcel had been purchased by Romana Velasquez on January 13, 1911, for the sum of 1,000 pesos. (R. 55, 63.) Parcels 21, 21a and 21b were assessed at the same value, .03 pesos per

square meter. Moreover, the testimony of the witnesses who testified in respect to values, shows no difference in values between the various parcels.

Not only was the estimate of value by the court below fair, but it was an eminently liberal one. Before the acquisition of this property for a railroad site, it had been used solely for the cultivation of rice, and was assessed at 2,582.22 pesos. There is not a single bit of testimony showing that it had been devoted to any other use, and the testimony abundantly shows that rice lands in the vicinity of Lucena were worth about .02 to .05 pesos per square meter. Deogracias Maligalig, one of the defendants, testified that rice lands in the municipality of Lucena were worth 500 pesos per cavan (hectare) (R. 38), or at the rate of .05 pesos per square meter. Ambrosia Zaballero (R. 43) testified that before the railroad came the land occupied by the railroad station was nothing but a rice field and was worth about 300 pesos per hectare, or .03 pesos per square meter. Cayo Alzona testified that in Candelaria rice lands were worth 200 pesos and 250 pesos per hectare, or .02 and .02½ pesos per square meter. (R. 47.) He also testified (R. 47) that he owned two parcels of land situated near the provincial building at Lucena. The parcel on the street, measuring approximately 22 ares, or 2,200 square meters, cost him 350 pesos, or .16 pesos per square meter in 1906 or 1907. The parcel to the west, which is a little less than a hectare, was purchased by him in December, 1912, about a month before the filing of the condemnation suit, for 1,500 pesos, or .15 pesos per square meter. Besides parcel 21 heretofore adverted to as having been sold by her

about six months before the filing of the suit, Romana Velasquez on November 9, 1912, about two and one-half months before the initiation of the expropriation proceedings, sold to Simeon Perez (R. 30, 103) three parcels of land, the first two of which approximated 23,000 square meters, while the area of the third was described as 3 gantas of rice. The total price of the three parcels was 2,500 pesos, or a little over .10 pesos per square meter. One of these parcels included lots 21a and 21b, approximating 8,700 square meters of the condemned land which the commissioners reported at a price higher than any of the rest. These two parcels were appraised by the commissioners at upwards of 29,000 pesos, a sum more than twelve times the price paid, just two and one-half months before the suit was filed, for the whole tract of 23,000 square meters, which included the two parcels referred to containing approximately 8,700 square meters.

That the testimony of the owners of the various parcels of land sought to be expropriated should be regarded as of but little value in determining the market value of the property is quite clear from a consideration of their own conduct in respect to the property. While they testified that the property ranged from 5 to 6 pesos per square meter, nevertheless it was disposed of by them during the pendency of the proceedings, and after they had testified, at a price far beneath this estimate. On May 26, 1913, at a date subsequent to the filing of the condemnation suit, Icasiano, the then owner of the parcel containing 16,094 square meters, sold it to the Tayabas Land Company for 18,000 pesos (R. 82); and on

July 1, 1913, about twenty days after the commissioners had rendered their report, all of the remaining owners of the condemned land sold their holdings, parcel by parcel, as it had been assessed by the commissioners, to the same company for 1.05 pesos per square meter, with the exception of Simeon Perez, who sold the two parcels owned by him at 2.27 pesos and 2.11 pesos per square meter, respectively. These acts by the various owners of the parcels of land, who had testified with respect to the market value of these lands, show conclusively that their testimony should have but little weight in determining the question of values. The deed of sale of parcel 21, reciting the fact that "it will be expropriated by the Manila Railroad Company" is evidence that the purchaser could not have intended the property for any purpose other than a speculative one—to sell it to the railroad company. This is true in respect to the subsequent sales of this particular parcel and the other parcels. They were purchased for speculative purposes only and not with the view that they would be put to any other use. We repeat that in the light of all this it is difficult to understand the remarkable statement of the plaintiff in error that the record presents a unanimity of testimony to the effect that the property was worth at least 5 pesos per square meter. The question for the determination of the court below was the actual market value of the land, and not the value the orgy of speculation indulged in, after the institution of the condemnation proceedings, sought to place upon it. Evidence of the specu-

lative prices at which these parcels were sold is not proper evidence to consider upon the question of the actual value of the property.

In *Kerr* v. *South Park Commissioners*, 117 U. S. 379, this court in discussing this question said that the true rule for the valuation of the property was correct and fairly stated in the charge of the court, which in part stated:

> "Situated as they then were, what were they worth in cash or on terms equivalent to cash in the market, if a market then existed for such lands? It is to be borne in mind—it was then known—that these lands were within the park lines and designated for park purposes. What would anyone needing lands for residence, business, or any other purpose, have paid for them in cash? You are not at liberty to place a value upon those lands upon the basis of what someone might have been willing to have bought them for on time at the date named for purely speculative purposes."

The court below, in reaching the conclusion, considered all the evidence in the record; and upon an examination of the evidence thus considered, it is perfectly apparent that the estimate of value placed upon the property in controversy by that court is a very liberal one.

For the convenience of this court, the clear and careful analysis of the testimony by the Supreme Court of the Philippine Islands with respect to the value of the land, to which nothing need be added, is here reproduced. In this connection the court below said:

"It will be seen that the lower court relied entirely upon the findings of the commissioners. The commissioners justified their appraisement of the land at a price so greatly in excess of its value as agricultural land upon the following considerations. First, the construction of the provincial building and the high school had increased the price of land in their vicinity. Second, the neighborhood of these buildings had become a choice residential district. Third, the population in the vicinity had increased since it became known that the condemned property had been selected as a station site by the railroad company. We propose to discuss the evidence of value precisely along these lines, starting first, however, with its value as agricultural land, the only use to which it has ever been put.

"The condemned land is not located in the commercial district of the town of Lucena, but is located near the provincial building and the high school. The land has been used from time out of mind solely for the cultivation of rice. Deogracias Maligalig, one of the defendants, testified that rice land in the municipality of Lucena was worth ₱500 per cavan (hectare). Melecio Allarey, another defendant, testified that such land was worth from ₱300 to ₱400 per hectare. Agustin testified that such land was worth between ₱400 and ₱500 per hectare if not under irrigation, and if under irrigation, more than ₱1,000. Ambrosio Zaballero, owner of more than 30 parcels of land in the municipality of Lucena, said that the site of the railroad station was nothing but a rice field prior to the coming of the railroad, worth

from ₱300 to ₱400 per hectare. Cayo Alzona, the only witness for the plaintiff, testified that in Candelaria, rice land was worth between ₱200 and ₱250 per hectare, he having purchased an uncleared parcel of rice land for ₱150 per hectare. It seems fair to accept the statement of the two defendants, Maligalig and Allarey, and fix the price of the condemned land for agricultural purpose at ₱500 per hectare. (R. 99.)

"Witnesses for the defendants, including three of the latter, fixed the value of the condemned land at prices ranging from ₱5 to ₱8 per square meter. The remaining defendant, Icasiano, did not testify before the commissioners. But in his answer filed about seven months after purchasing the land for ₱0.81 per square meter, he alleged that his parcel was worth ₱5 per square meter. So that we have all of the defendants and several other witnesses estimating the value of the condemned land at about the same figure, or from ₱50,000 to ₱80,000 per hectare.

"The defendant, Melecio Allarey, testified that he owned 30,000 square meters of land in the vicinity of the railroad station site, 2,895 square meters of which *was* wanted by the plaintiff company. Upon being asked what the value of his land was, he promptly replied that it was worth ₱5.50 per square meter. Asked if he were making his will whether he would list this property at a total value of ₱150,000, he evaded a direct reply by saying that he would divide it among his children. Asked if he considered himself the owner of land valued at ₱150,000, he replied that for his purpose he figured on that price. Asked if he would declare the land

to be worth that sum in his sworn tax declaration, he replied that he would accept the figures fixed upon by the tax appraisers. His testimony shows clearly that he did not desire to commit himself positively to the assertion that his three hectares of land *was* worth ₱150,000. His ambiguous and evasive replies on cross-examination do not at all harmonize with his unequivocal statement in his direct examination that his land was worth ₱5.50 per square meter. Apparently, when confronted with the price per hectare, which this estimate would put upon his land, he was somewhat astounded. Indeed, we are inclined to believe that one of the reasons for the high value placed upon the condemned land by all the witnesses is that they were estimating the price per square meter instead of per hectare, which is the customary method of fixing the price of agricultural land. A perusal of the remainder of the testimony of the defendant Allarey shows that he is paying annual taxes on his 30,000 square meters of land amounting to between ₱12 and ₱13. He also naively informs us that he has not been able to till the land lately because he has no carabaos or other work animals.

"Several of the witnesses for the defendants testified to having purchased land in the vicinity of the station site for residential purpose. Thus, Edard testified that he paid ₱1,400 for 220 square meters in 1910. Andres Dinlasan sold 119 square meters for ₱10 per square meters on June 6, 1912. He could give no reason why the purchaser had paid so much for the land, but, in response to a question, said the purchaser had some more

land joining it. Agustin bought 1,900 square meters in 1910 for ₱2 per square meter. Esteban Lagos paid ₱1,000 for a plot 16 by 18 meters in 1911. A most remarkable thing about these purchases is that, as choice residential sites, they are so extremely small. With the possible exception of the parcel purchased by Agustin, the parcels in question are hardly generous enough to permit of the construction of even a modest mansion. Cayo Alzona testified that he purchased 2,200 square meters in 1906 for ₱350, and that he purchased a little less than one hectare in 1912, all in the vicinity of the station site, for which he paid ₱1,500.'' * * * (R. 100-101.)

"Aside from the bare fact that the real estate transactions referred to by the witnesses were somewhere in the vicinity of the condemned land, there is nothing to guide us as to the relative value of the condemned land. The differences which must have existed between the various parcels of land in the vicinity we are left to imagine. And while the commissioners' view of the condemned land undoubtedly assisted them in forming their estimate of value, still counsel should not have relied upon their astuteness to discover differences in values, but should have brought them specifically to the attention of the commissioners. It seems rather unusual, also, that the bare statements of witnesses should be accepted as to the prices which nearby parcels brought, in view of the insistence of counsel that the condemned land is nothing more than agricultural land. These sales should have been thoroughly investigated to determine whether they were made bona fide, and, if so, whether they were attended

by unusual circumstances which materially increased the purchase price.

"But while these transfers of nearby land are interesting as bearing upon the value of the condemned land, the record also shows several transfers of the latter itself after it became generally known that it had been selected by the railroad company as the site for its Lucena station. We take it that these transactions, in which the defendants were themselves parties, offer a far more certain basis for estimating the value of the land than do their testimony before the commissioners or the testimony of other witnesses as to fancy prices paid for neighboring parcels. Romana Velasquez, who owned the major portion of the condemned land, disposed of hers to her nephews surnamed Perez. Her first sale was on July 21, 1912. This parcel contained 16,094 square meters and brought at this time ₱6,500, or a little more than ₱0.40 per square meter. A month later Perez sold this parcel to one Icasiano for ₱13,000, or a little less than ₱0.81 per square meter. Sra. Velasquez' next sale was of three parcels, the first two of which contained approximately 23,000 square meters, while the area of the third was described as three gantas of rice. The total price of the three parcels was ₱2,500 or a little over ₱0.10 per meter. In one of these parcels was located approximately 8,700 square meters of the condemned land which the commissioners reported at a price higher than any of the rest.

"On May 26, 1913, Icasiano, the then owner of the parcel containing 16,094 square meters, sold it to the Tayabas Land Company for ₱18,000; and on July 1, 1913, some

twenty days after the commissioners had rendered their report, all of the remaining owners of the condemned land sold their holdings, parcel by parcel, as it had been assessed by the commissioners, to the same company for ₱1.05 per square meter, with the exception of Simeon Perez, who sold the two parcels owned by him at ₱2.27 and ₱2.11, respectively. Here is the most convincing argument that all the witnesses who placed values on the condemned property, ranging from ₱5 per square meter to ₱8 per meter, were seriously in error. After all the speculation concerning the land, after the commissioners had reported its value at prices ranging from ₱2 to ₱3.75 per square meter, the owners sold the land, parcel by parcel, as it had been assessed by the commissioners for a little more than ₱1 per meter, with the exception of Simeon Perez, who accepted ₱2.11 and ₱2.27 for the two parcels which the commissioners had appraised at ₱3.50 and ₱3.75 per meter, respectively. It is unfortunate that the commissioners did not have an opportunity to consider the deeds executed by the defendants in favor of the Tayabas Land Company. With the commissioners' valuation of the land before them, the Tayabas Land Company was actually able to purchase from the defendants all of the condemned land at a greatly inferior price. The defendants were not able to resist an offer of ₱1 and ₱2 per meter for their holdings, notwithstanding their fervid declarations before the commissioners that their property was worth ₱5 per meter, and notwithstanding the official report by a board composed of local men that it was worth from ₱2 to ₱3.75 per meter. This, of

course, does not include the defendant Icasiano, who sold out to the land company after the commission had been appointed but before it had begun its labors. It is to be remembered, however, that he both bought and sold the land after the railroad company had made known its intention of expropriating it, and that in his answer to the complaint he alleged his land to be worth ₱5 per meter.

"Now, what was the object of the Tayabas Land Company in purchasing the land? Evidently it was not with the intention of making any use of it, for the railroad company had long since taken possession. They, as well as the owners, were simply speculating on the probability that the award of the commissioners would be approved by the court. It was little more than a sporty guess on each side as to what would be allowed for the land by the final judgment of the court. The company believed the award would exceed ₱1.05 per meter, and the defendants thought the risk that the award would be in a lesser amount was so great that they let the land go for the price the company offered them. Nor is it at all certain that the prices inserted in these deeds of sale were not fictitiously inflated. The circumstances under which the sales were made would readily suggest the expediency of inserting fictitious prices in the deeds.

"The moment a parcel of land is wanted by a public service corporation the price, for some occult reason, immediately soars far beyond what the owner would think of asking or receiving in the open market. Owners ask fabulous prices for it and neighbors look on with an indulgent smile or even persuade themselves that the land is worth the price for

which the owner holds out—in view of the fact that it is wanted by a corporation, whose financial resources are popularly supposed to be inexhaustible. The resultant good to a community due to the investment of new capital, the increased employment of labor, and the services the corporation will render are for the moment forgotten; and persons called upon for opinions as to the price of the desired property unconsciously, perhaps, but nevertheless, relax from that sound business acumen which guides them in their daily affairs, while they are considering the price not which they would care to pay if they wanted the land, but the price which the corporation ought to pay in view of the fact that it is a corporation." * * * (R. 102-104.)

"Now, what was the utility of the land condemned? So far as the record shows, its possible uses were, first, for the cultivation of rice; second, as a residential site owing to its proximity to the provincial building and the high school; and third, as a railroad station site.

"Its location from a farmer's point of view would doubtless enhance its value, since it was so close to the town of Lucena that the marketing of crops was a decidedly simple matter. For this reason it was more valuable as agricultural land than other farms farther away from town.

"As a residential site it seems to have been so far a complete failure. How long the high school had stood there the record does not state. But although the provincial building had stood near it for several years, not a single homebuilder had selected any portion of the condemned land as a site for his resi-

dence. We note that all those who testified at the hearing before the commissioners to having purchased land in the vicinity for home sites, purchased other land than that condemned. Nor does the record contain any intimation that any of the owners of the land had ever attempted to dispose of any part of it as building lots. As a residential site, therefore, its value was decidedly problematical. Possibly, in the next dozen years a few houses might have been built upon the land, but, judging by the past record, its development along this line would have been extremely slow.

"As a railroad station site, the record gives no indication that it is the sole possible location for that purpose in Lucena. It is not shown that its location for that purpose is at all superior to other possible locations. Indeed it seems that the railroad company at first selected another site for its station on the other side of town. Hence, possessing no exclusive natural advantages for this purpose, it is a foregone conclusion that the railroad company would not willingly pay ₱81,000 for such a site when it could have purchased another site for, say, ₱1,500.

"Here it seems proper to say that the appearance of the railroad in the town of Lucena was the occasion for an incipient real estate boom in the vicinity of the provincial building and the high school. Several of the witnesses for the defendants testified what they would offer, if they were in the market for land in the vicinity of the station site, and the witness Alzona, the single witness who testified for the plaintiff, testified that some owners of land near the provincial building were

asking between ₱500 and ₱700 for lots of 400 square meters. It is clear that these hypothetical purchases and sales do not offer any reliable basis upon which to calculate the actual market value of the land. The fond dreams of the owners of a sudden shift of the business center of the town of Lucena to their vicinity, or of its becoming a choice residential district, are not capital in hand." * * * (R. 106-107.)

"From the evidence we have discussed above, it is apparent that a good price for rice land in the vicinity of Lucena is ₱500 per hectare. With this as a basis, at what would the prospective buyer estimate the possibility of the land being used as a residential site sometime in the future and its possible advantages as a railroad site? Certainly, at nothing like the estimates contained in the report of the commissioners. To secure an adequate return on such a large investment as ₱80,000, every meter of the land would have to be put to immediate use as residential sites, supposing that people could be induced to buy it for that purpose at such figures or to pay the necessarily large rent therefor based on such a valuation. And to hold out for such a figure in case a railroad company wanted the land as a depot site would mean that the company would locate its depot at some other place. It seems to us that either as a residential site or as a railroad station site, its value should be principally regulated by the value of other agricultural land on the outskirts of the town. In other words, the chance that it would be wanted for either of these purposes owing to its superior location was but slightly greater

than that of other agricultural land adjacent to the town. We are, therefore, led to the conclusion that the price at which practically half of the condemned land was sold by Romana Velasquez to the defendant, Filemon Perez, is a most liberal estimate of its value. We refer to her sale of the parcel of 16,094 square meters for ₱6,500. This parcel comprises practically one-half of the entire station site and no outside land was included in the transaction. The sale was made after it became known that the land sold was to be part of the station site, and a statement to this effect was included in the deed. Both parties being aware that the land was to be condemned by the plaintiff company, it can not be said that they were not aware of all the latent utility of the land. For these reasons, the price which this parcel brought should serve as an excellent criterion of the value of the entire station site. And while no explanation is given of why the sale occurred, since, of course, no one would buy it with the expectation of using it himself when he knew that it would shortly be occupied by the railroad company, still there is not sufficient indication that it was sold for speculative purposes or that the element of speculation entered into the transaction to enable us to say that the price was inflated and exceeded the actual market value of the land. This price assumes the value of the condemned land as agricultural land to be worth ₱500 per hectare, and leaves a littl e more than ₱3,500 for its potential value as a residential district and as a railroad station site. This is, furthermore, approximately 400 per cent higher than Sra. Velasquez' second sale

(some four months later) to Simeon Perez, when she sold about 23,000 square meters in the same neighborhood for a little over ₱1,000 per hectare.

"It is to be further noted that the average assessed valuation of the condemned property is somewhat less than ₱0.08 per square meter, while the highest assessed valuation of any of it is only ₱0.23 per square meter, which is carried by some 5,973 square meters, or less than one-sixth of the whole. It is also to be noted that these 5,973 square meters were appraised by the commissioners as being worth exactly what the 16,094 square meters were worth, the latter being assessed for taxation purposes at only ₱0.03 per square meter.

"At the price we have fixed, we are of the opinion that any consequential damages which may have been occasioned to any of the defendants by the condemnation proceedings is amply cared for." (R. 107-108.)

## CONCLUSION.

For the considerations presented it is submitted the judgment of the Supreme Court of the Philippine Islands should be affirmed with costs.

Respectfully submitted.

Edward D. Bailey

*Attorney for Defendant in Error.*

WASHINGTON, D. C.
*April 12, 1919.*

## TAYABAS LAND COMPANY, ASSIGNEE AND SUCCESSOR OF VELASQUEZ ET AL., *v.* MANILA RAILROAD COMPANY.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 331. Argued April 25, 1919.—Decided May 19, 1919.

Under §§ 246, 273, 496 and 497 of the Code of Civil Procedure of the Philippine Islands, the Supreme Court of the Islands may review the evidence touching the amount of an award reported by commissioners and accepted by the Court of First Instance in a condemnation case, and may find a different amount upon a preponderance of the evidence and modify the judgment accordingly if a motion for new trial has been made and exceptions taken as provided in the last-mentioned section. P. 24.

This court will accept a construction placed by the Supreme Court of the Philippine Islands upon a local statute, if not clearly erro-

neous, and will assume that that court duly considered and weighed the testimony and commissioners' report on the facts. P. 27.

This court cannot examine questions of fact in a case coming from the Philippine court on writ of error. *Id.*

32 Phil. Rep. 286, affirmed.

THE case is stated in the opinion.

*Mr. David A. Baer*, with whom *Mr. A. S. Crossfield* and *Mr. S. W. O'Brien* were on the brief, for plaintiff in error.

*Mr. Edward S. Bailey* for defendant in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

A case of eminent domain exercised by the railroad company to condemn twelve small parcels of land in Lucena, Province of Tayabas, Philippine Islands, in accordance with the petition of the railroad company.

In accordance with the statutory provisions three commissioners were appointed to hear the parties and inspect the properties. They subsequently reported that the parties had been heard and that they, the commissioners, had inspected the properties and examined the same "inch by inch."

They made further detail of their proceedings, set forth certain causes for the increase in value of the properties in the four or five years preceding the hearing, even before the coming of the railroad to the town "so that the value of land near Cotta was quoted at P2.00 up per square meter, according to the importance and situation of the land," but that the railroad had "undoubtedly greatly influenced the rise in the prices of the same lands." They reported, however, that, taking into consideration all the circumstances, benefits to the railroad and others, they unanimously fixed the values of the pieces of prop-

erty belonging to the parties who were first impleaded in the cause. These values it is not necessary to give nor to designate the properties to which they were attached, for the reason that the ownership of the properties, part before and part after the rendition of the commissioners' report, had become vested in the Tayabas Land Company.

In accordance with the report judgment was rendered in favor of the land company for P81,412.75, with interest at the rate of 6% from the date of taking possession of the land.

Motions for new trials were denied and the case was taken to the Supreme Court of the Islands by the railroad company, and that court modified the judgment by reducing the award for one of the parcels, containing 16,094 square meters, to the sum of P6,500, and the damages for the remaining parcels were fixed at the same proportionate amount.

The land company says, however, that "the prime question involved in this entire case is in its last analysis one of value, that is, what is a fair value of the land taken by the railroad company for its railroad station at Lucena?" That, indeed, is the ultimate inquiry, but it depends, according to other contentions, upon the power of the Supreme Court over the report of the commissioners and to review and consider the evidence. In other words, the weight that was to be given to the report of the commissioners as a matter of fact and law under § 246 of the Code of Civil Procedure of the Islands and to the findings of the Court of First Instance under §§ 273 and 497 of the same code.

Section 273 describes the elements that must be considered in determining in a case where "the preponderance or superior weight of evidence on the issues involved lies," and § 497 provides for the extent of the power of the Supreme Court to review and dispose of the case on ap-

peal, and it is contended that the Supreme Court was bound, as the Court of First Instance was, to decide by the preponderance of the evidence determined in the same way. This may be conceded, and to what extent the Supreme Court satisfied the requirement of the section we shall presently consider after we have given attention to the more insistent contention based on § 246, which reads as follows:

"Upon the filing of such report in court, the court shall, upon hearing, accept the same and render judgment in accordance therewith; or for cause shown, it may recommit the report to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part, and may make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken; and the judgment shall require payment of the sum awarded as provided in the next section, before the plaintiff can enter upon the ground and appropriate it to the public use."

It will be observed that an alternative power is presented, either to accept the report and render judgment in accordance therewith or to make other dispositions of it or upon it; the latter, however, in a very general way. And the absence of detail encourages and gives some plausibility to controversy, but it is resolved, we think, against the contention of the land company by the analysis of the Supreme Court of the section. The court points out, quoting the section, that it may "accept the report in part and reject it in part;" and it observed that that situation alone might limit the court's power if it were not also empowered "to make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and

to the defendant just compensation for the land so taken." A comprehensive power, we may instantly say, and one required to be exercised and adequate when exercised to pass upon and finally adjudge the designated rights. And it gives facility to the statute, substitutes for circumlocution and delay, directness and expedition, qualities that a statute of eminent domain should possess.

The court further pointed out that the "'final order and judgment' are reviewable by this court by means of a bill of exceptions in the same way as any other 'action,'" and decided besides that § 496 of the Code was applicable. That section gives power in the exercise of appellate jurisdiction to "affirm, reverse, or modify any final judgment, order, or decree of the Court of First Instance." And this discretion, the Supreme Court in the present case decided, extends to cases of eminent domain and, where § 497 of the Code providing for motions for new trial had been complied with, it, the court, might "examine the testimony and decide the case by a preponderance of the evidence; or, in other words, retry the case on the merits and render such order or judgment as justice and equity may require." The final conclusion of the court was, rejecting the contention of appellants, that it had power "to change or modify the report of the commissioners by increasing or decreasing the amount of the award" if the facts of the case justified. And it was the conclusion of the court that the facts so justified; and, after a review of prior cases, it rejected the contention that its conclusion was in conflict with them.

It will be observed, therefore, that the court considered that it was under the same obligation to determine the case by the preponderance of the evidence as was the Court of First Instance, and discharging its obligation, that is, in determining upon the weight of the evidence, its estimate of the values of the properties taken by the railroad was different from that of the Court of First Instance.

We are brought back, therefore, to the consideration of § 246 and the contention of plaintiff in error that under it the Supreme Court had transcended its powers in reducing the values found and reported by the commissioners and "erred in holding as a matter of law that appellants were not entitled to recover the amount fixed by the commissioners," they being the tribunal to hear the evidence and view the premises, and that under § 246, their report being filed, the court was required "upon hearing to accept the same and render judgment in accordance therewith," there being no cause shown, it is contended, for recommitting the report or exercising any of the other alternatives permitted by the section.

But, as we have seen, as to its power of action upon the report of the commissioners the court differed radically with the land company, and if we should, in deference to the land company's contention, admit there is ambiguity in § 246, we should be unable nevertheless to reverse the ruling of the Supreme Court of the Islands upon the local statutes, and we must assume the court gave consideration to all of the testimony and estimated the weight to be assigned to the report and to the declaration of the commissioners that they had examined "inch by inch" the properties involved. We say this only in passing. The case is here on writ of error and we cannot examine questions of fact. *Santos* v. *Roman Catholic Church*, 212 U. S. 463; *Ling Su Fan* v. *United States*, 218 U. S. 302, 308; *Harty* v. *Victoria*, 226 U. S. 12; *Gauzon* v. *Compañia General &c.*, 245 U. S. 86, 88.

Errors of law besides those stated above are asserted. For instance the company contends that the court used the evidence that had been introduced to prove title as evidence of value and, further, assigned too much strength to it. Both propositions are too intimately associated with and dependent upon the whole case to be estimated in separation. The court's consideration, therefore, or its

judgment upon them we cannot disturb. Indeed, the contention of the land company is but an instance of its broader contention of want of power in the Supreme Court to review the findings of the Court of First Instance or to disregard the report of the commissioners. Accepting the decision of the court upon those propositions, we necessarily affirm its judgment.

*Judgment affirmed.*

MR. JUSTICE BRANDEIS concurs in the result.